

Title 16

Health

TITLE 16 HEALTH

IC 16-18-2

Chapter 2. Definitions

IC 16-18-2-6 Repealed

(Repealed by P.L.205-2003, SEC.44.)

IC 16-18-2-7

Advanced life support

Sec. 7. (a) "Advanced life support", for purposes of IC 16-31, means care that is given:

(1) at the scene of:

(A) an accident;

(B) an act of terrorism (as defined in IC 35-41-1-26.5), if the governor has declared a disaster emergency under IC 10-14-3-12 in response to the act of terrorism; or

(C) an illness;

(2) during transport; or

(3) at a hospital;

by a paramedic or an emergency medical technician-intermediate and

that is more advanced than the care usually provided by an emergency medical technician or an emergency medical technician-basic advanced.

(b) The term may include any of the following:

(1) Defibrillation.

(2) Endotracheal intubation.

(3) Parenteral injections of appropriate medications.

(4) Electrocardiogram interpretation.

(5) Emergency management of trauma and illness.

As added by P.L.2-1993, SEC.1. Amended by P.L.156-2001, SEC.1; P.L.17-2002, SEC.1; P.L.2-2003, SEC.43; P.L.205-2003, SEC.8.

IC 16-18-2-10

"Agency"

Sec. 10. (a) "Agency", for purposes of IC 16-31-8.5, has the meaning set forth in IC 16-31-8.5-1.

(b) "Agency", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-1.

As added by P.L.2-1993, SEC.1. Amended by P.L.205-2003, SEC.9.

IC 16-18-2-12

Sec. 12. "Alcohol and drug abuse records", for purposes of IC 16-39, means recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving alcohol or drug abuse treatment services.

As added by P.L.2-1993, SEC.12.

IC 16-18-2-33.5

Basic life support

Sec. 33.5. (a) "Basic life support", for purposes of IC 16-31, means the following:

(1) Assessment of emergency patients.

(2) Administration of oxygen.

(3) Use of mechanical breathing devices.

(4) Application of anti-shock trousers.

(5) Performance of cardiopulmonary resuscitation.

(6) Application of dressings and bandage materials.

(7) Application of splinting and immobilization devices.
(8) Use of lifting and moving devices to ensure safe transport.
(9) Use of an automatic or a semiautomatic defibrillator if the defibrillator is used in accordance with training procedures established by the Indiana emergency medical services commission.
(10) Administration by an emergency medical technician or emergency medical technician-basic advanced of epinephrine through an auto-injector.
(11) For an emergency medical technician-basic advanced, the following:
(A) Electrocardiogram interpretation.
(B) Manual external defibrillation.
(C) Intravenous fluid therapy.
(12) Other procedures authorized by the Indiana emergency medical services commission, including procedures contained in the revised national emergency medical technician basic training curriculum guide.
(b) Except as provided by:
(1) subsection (a)(10) and the training and certification standards established under IC 16-31-2-9(4);
(2) subsection (a)(11)(C); and
(3) the training standards established under IC 16-31-2-9(5);
the term does not include invasive medical care techniques or advanced life support.
As added by P.L.186-1995, SEC.1. Amended by P.L.17-2002, SEC.3; P.L.93-2002, SEC.1; P.L.205-2003, SEC.10.

IC 16-18-2-55.5

Chronic disease

Sec. 55.5. "Chronic disease", for purposes of IC 16-38-6, has the meaning set forth in IC 16-38-6-1.
As added by P.L.212-2003, SEC.2.

IC 16-18-2-109.1

"Emergency medical dispatch agency"

Sec. 109.1. "Emergency medical dispatch agency", for purposes of IC 16-31-3.5, has the meaning set forth in IC 16-35-3.5-1.

As added by P.L.205-2003, SEC.11.

IC 16-18-2-109.3

"Emergency medical dispatcher"

Sec. 109.3. "Emergency medical dispatcher", for purposes of IC 16-31-3.5, has the meaning set forth in IC 16-35-3.5-1.

As added by P.L.205-2003, SEC.12.

IC 16-18-2-109.5

"Emergency medical dispatching"

Sec. 109.5. "Emergency medical dispatching", for purposes of IC 16-31-3.5, has the meaning set forth in IC 16-35-3.5-1.

As added by P.L.205-2003, SEC.13.

IC 16-18-2-112.5

"Emergency medical technician-basic advanced"

Sec. 112.5. "Emergency medical technician-basic advanced", for purposes of IC 16-31, means an individual who is certified under IC 16-31 to provide basic life support at the scene of an accident or illness or during transport.

As added by P.L.205-2003, SEC.14

IC 16-18-2-112.7

"Emergency medical technician-intermediate"

Sec. 112.7. "Emergency medical technician-intermediate", for purposes of IC 16-31, means an individual who can perform at least one (1) of but not all the procedures of a paramedic and who:

- (1) has completed a prescribed course in advanced life support;
- (2) has been certified by the Indiana emergency medical services commission;
- (3) is associated with a single supervising hospital; and

(4) is affiliated with a provider organization.

As added by P.L.205-2003, SEC.15.

IC 16-18-2-143

Fund

Sec. 143. (a) "Fund", for purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.

(b) "Fund", for purposes of IC 16-31-8.5, has the meaning set forth in IC 16-31-8.5-2.

(c) "Fund", for purposes of IC 16-46-5, has the meaning set forth in IC 16-46-5-3.

(d) "Fund", for purposes of IC 16-46-12, has the meaning set forth in IC 16-46-12-1.

As added by P.L.2-1993, SEC.1. Amended by P.L.14-2000, SEC.43; P.L.81-2002, SEC.1; P.L.205-2003, SEC.16.

IC 16-18-2-163

Health care provider

Sec. 163. (a) "Health care provider", for purposes of IC 16-21 and IC 16-41, means any of the following:

(1) An individual, a partnership, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a licensed physician, a psychiatric hospital, a hospital, a health facility, an emergency ambulance service (IC 16-31-3), a dentist, a registered or licensed practical nurse, a midwife, an optometrist, a pharmacist, a podiatrist, a chiropractor, a physical therapist, a respiratory care practitioner, an occupational therapist, a psychologist, a paramedic, an emergency medical technician, an emergency medical technician-basic advanced, an emergency medical technician-intermediate, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

(2) A college, university, or junior college that provides health care to a student, a faculty member, or an employee, and the governing board or a person who is an officer, employee, or agent of the college, university, or junior college acting in the course and scope of the person's employment.

(3) A blood bank, community mental health center, community mental retardation center, community health center, or migrant health center.

(4) A home health agency (as defined in IC 16-27-1-2).

(5) A health maintenance organization (as defined in IC 27-13-1-19).

(6) A health care organization whose members, shareholders, or partners are health care providers under subdivision (1).

(7) A corporation, partnership, or professional corporation not otherwise qualified under this subsection that:

(A) provides health care as one (1) of the corporation's, partnership's, or professional corporation's functions;

(B) is organized or registered under state law; and

(C) is determined to be eligible for coverage as a health care provider under IC 34-18 for the corporation's, partnership's, or professional corporation's health care function.

Coverage for a health care provider qualified under this subdivision is limited to the health care provider's health care functions and does not extend to other causes of action.

(b) "Health care provider", for purposes of IC 16-35, has the meaning set forth in subsection (a). However, for purposes of IC 16-35, the term also includes a health facility (as defined in section 167 of this chapter).

(c) "Health care provider", for purposes of IC 16-36-5, means an individual licensed or authorized by this state to provide health care or professional services as:

(1) a licensed physician;

(2) a registered nurse;

(3) a licensed practical nurse;

(4) an advanced practice nurse;

(5) a licensed nurse midwife;

(6) a paramedic;

(7) an emergency medical technician;

(8) an emergency medical technician-basic advanced;

(9) an emergency medical technician-intermediate; or

(10) a first responder, as defined under IC 16-18-2-131.

The term includes an individual who is an employee or agent of a health care provider acting in the course and scope of the individual's employment.

As added by P.L.2-1993, SEC.1. Amended by P.L.26-1994, SEC.7; P.L.188-1995, SEC.1; P.L.1-1998, SEC.116; P.L.148-1999, SEC.6; P.L.205-2003, SEC.17

IC 16-18-2-168

Health records

Sec. 168. (a) "Health records", for purposes of IC 16-39, means written, electronic, or printed information possessed or maintained by a provider concerning any diagnosis, treatment, or prognosis of the patient, including such information possessed or maintained on microfiche, microfilm, or in a digital format. The term includes mental health records and alcohol and drug abuse records.

(b) For purposes of IC 16-39-5-3(e), the term includes information

that describes services provided to a patient and a provider's charges for services provided to a patient.

(c) The term does not include information concerning emergency ambulance services described in IC 16-31-2-11(d).

As added by P.L.2-1993, SEC.1. Amended by P.L.231-1999, SEC.11; P.L.127-2001, SEC.1; P.L.44-2002, SEC.2; P.L.255-2003, SEC.45.

IC 16-18-2-167

Sec. 167. (a) "Health facility" means a building, a structure, an institution, or other place for the reception, accommodation, board, care, or treatment extending beyond a continuous twenty-four (24) hour period in a week of more than four (4) individuals who need or desire such services because of physical or mental illness, infirmity, or impairment.

(b) The term does not include the premises used for the reception, accommodation, board, care, or treatment in a household or family, for compensation, of a person related by blood to the head of the household or family (or to the spouse of the head of the household or family) within the degree of consanguinity of first cousins.

(c) The term does not include any of the following:

(1) Hotels, motels, or mobile homes when used as such.

(2) Hospitals or mental hospitals, except for that part of a hospital that provides long term care services and functions as a health facility, in which case that part of the hospital is licensed under IC 16-21-2, but in all other respects is subject to IC 16-28.

(3) Institutions operated by the federal government.

(4) Foster family homes or day care centers.

(5) Schools for the deaf or blind.

(6) Day schools for the retarded.

(7) Day care centers.

(8) Children's homes and child placement agencies.

(9) Offices of practitioners of the healing arts.

(10) Any institution in which health care services and private duty nursing services are provided that is listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc.

(11) Industrial clinics providing only emergency medical services or first aid for employees.

(12) A residential facility (as defined in IC 12-7-2-165).

(13) Maternity homes.

(14) Offices of Christian Science practitioners.

As added by P.L.2-1993, SEC.1. Amended by P.L.61-1993, SEC.62; P.L.111-1996, SEC.2.

IC 16-18-2-168

Sec. 168. (a) "Health records", for purposes of IC 16-39, means written, electronic, or printed information possessed by a provider concerning any diagnosis, treatment, or prognosis of the patient. The term includes mental health records and alcohol and drug abuse records.

(b) For purposes of IC 16-39-5-3(e), the term includes information that describes services provided to a patient and a provider's charges for services provided to a patient.

(c) The term does not include information concerning emergency ambulance services described in IC 16-31-2-11(d).

As added by P.L.2-1993, SEC.1. Amended by P.L.231-1999, SEC.11; P.L.127-2001, SEC.1; P.L.44-2002, SEC.2.

IC 16-18-2-179

Sec. 179. (a) "Hospital", except as provided in subsections (b) through (f), means a hospital that is licensed under IC 16-21-2.

(b) "Hospital", for purposes of IC 16-21, means an institution, a place, a building, or an agency that holds out to the general public that it is operated for hospital purposes and that it provides care, accommodations, facilities, and equipment, in connection with the services of a physician, to individuals who may need medical or surgical services. The term does not include the following:

(1) Freestanding health facilities.

(2) Hospitals or institutions specifically intended to diagnose, care, and treat the following:

(A) Mentally ill individuals (as defined in IC 12-7-2-131).

(B) Individuals with developmental disabilities (as defined in IC 12-7-2-61).

(3) Offices of physicians where patients are not regularly kept as bed patients.

(4) Convalescent homes, boarding homes, or homes for the aged.

(c) "Hospital", for purposes of IC 16-22-8, has the meaning set forth in IC 16-22-8-5.

(d) "Hospital" or "tuberculosis hospital", for purposes of IC 16-24, means an institution or a facility for the treatment of individuals with tuberculosis.

(e) "Hospital", for purposes of IC 16-34, means a hospital (as defined in subsection (b)) that:

(1) is required to be licensed under IC 16-21-2; or

(2) is operated by an agency of the United States.

(f) "Hospital", for purposes of IC 16-41-12, has the meaning set forth in IC 16-41-12-6.

As added by P.L.2-1993, SEC.1. Amended by P.L.144-1996, SEC.1; P.L.162-1999, SEC.3.

IC 16-18-2-223.6

"Medical director"

Sec. 223.6. "Medical director", for purposes of IC 16-31-3.5, has the meaning set forth in IC 16-35-3.5-1.

As added by P.L.205-2003, SEC.18.

IC 16-18-2-225.8

Sec. 225.8. "Mental health provider", for purposes of IC 16-36-1.5, has the meaning set forth in IC 16-36-1.5-1.

As added by P.L.145-1996, SEC.1.

IC 16-18-2-226

YAMD.1997

Sec. 226. "Mental health records", for purposes of IC 16-39, means recorded or unrecorded information concerning the diagnosis, treatment, or prognosis of a patient receiving mental health services or developmental disability training. The term does not include alcohol and drug abuse records.

As added by P.L.2-1993, SEC.1. Amended by P.L.4-1997, SEC.2

IC 16-18-2-264

Operator

Sec. 264. "Operator", for purposes of IC 16-41-31, has the meaning set forth in IC 16-41-31-4.

As added by P.L.2-1993, SEC.1. Amended by P.L.144-1996, SEC.4; P.L.104-2003, SEC.2.

IC 16-18-2-290.5

Repealed

(Repealed by P.L.237-2003, SEC.18.)

IC 16-18-2-295

"Provider"

Sec. 295. (a) "Provider", for purposes of IC 16-38-5, IC 16-39 (except for IC 16-39-7) and IC 16-41-1 through IC 16-41-9 and IC 16-41-37, means any of the following:

(1) An individual (other than an individual who is an employee or a contractor of a hospital, a facility, or an agency described in subdivision (2) or (3)) who is licensed, registered, or certified as a health care professional, including the following:

- (A) A physician.
 - (B) A psychotherapist.
 - (C) A dentist.
 - (D) A registered nurse.
 - (E) A licensed practical nurse.
 - (F) An optometrist.
 - (G) A podiatrist.
 - (H) A chiropractor.
 - (I) A physical therapist.
 - (J) A psychologist.
 - (K) An audiologist.
 - (L) A speech-language pathologist.
 - (M) A dietitian.
 - (N) An occupational therapist.
 - (O) A respiratory therapist.
 - (P) A pharmacist.
 - (2) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or described in IC 12-24-1 or IC 12-29.
 - (3) A health facility licensed under IC 16-28-2.
 - (4) A home health agency licensed under IC 16-27-1.
 - (5) An employer of a certified emergency medical technician, a certified emergency medical technician-basic advanced, a certified emergency medical technician-intermediate, or a certified paramedic.
 - (6) The state department or a local health department or an employee, agent, designee, or contractor of the state department or local health department.
 - (b) "Provider", for purposes of IC 16-39-7-1, has the meaning set forth in IC 16-39-7-1(a).
- As added by P.L.2-1993, SEC.1. Amended by P.L.188-1995, SEC.2; P.L.20-1998, SEC.1; P.L.231-1999, SEC.12; P.L.256-1999, SEC.10; P.L.205-2003, SEC.19.*

IC 16-18-2-323.1

School bus

Sec. 323.1. "School bus", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.3.
As added by P.L.252-2003, SEC.7.

IC 16-18-2-323.4

School week

Sec. 323.4. "School week", for purposes of IC 16-41-37, has the meaning set forth in IC 16-41-37-2.7.
As added by P.L.252-2003, SEC.8

IC 16-18-2-337

Sponsoring or supervising hospital

Sec. 337. "Sponsoring" or "supervising hospital", for purposes of IC 16-31, means a hospital:
 (1) that is licensed under IC 16-21-2 or under the licensing law of another state; and
 (2) that has been certified by the emergency medical services commission to sponsor or supervise paramedics, emergency medical technicians-intermediate, and provider organizations in providing advanced life support.

As added by P.L.2-1993, SEC.1. Amended by P.L.205-2003, SEC.20.

IC 16-18-2-337.8

Standard licensed diagnostic test for HIV

Sec. 337.8. "Standard licensed diagnostic test for HIV", for purposes of IC 16-41-6, has the meaning set forth in IC 16-41-6-0.5.
As added by P.L.237-2003, SEC.4

IC 16-18-2-353.5

"Training or educational purposes"

Sec. 353.5. "Training or educational purposes", for purposes of IC 16-39-7.1, has the meaning set forth in

IC 16-39-7.1-1.5.

As added by P.L.179-2003, SEC.1.

IC 16-29-4

Chapter 4. ICF/MR Beds

IC 16-29-4-1

Sec. 1. This chapter applies to the following:

- (1) The conversion of existing health facility beds to ICF/MR beds.
- (2) The construction of new ICF/MR facilities after June 30, 1987.

As added by P.L.2-1993, SEC.12.

IC 16-29-4-2

Sec. 2. (a) As used in this chapter, "ICF/MR" refers to an intermediate care facility for the mentally retarded.

(b) The term does not include a facility administered under IC 12-11-1.1 or IC 12-22-2.

As added by P.L.2-1993, SEC.12. Amended by P.L.272-1999, SEC.50.

IC 16-29-4-3

Sec. 3. The Indiana health facilities council may recommend, before the conversion of existing health facility beds to ICF/MR beds or the construction of a new ICF/MR facility, that the state department issue a preliminary approval of the proposed project, but only if the council determines that there is an insufficient number of available beds to care for all the persons who are determined under IC 12-11-2.1 to be appropriate for placement in an ICF/MR facility.

As added by P.L.2-1993, SEC.12. Amended by P.L.272-1999, SEC.51.

IC 16-29-4-4

Sec. 4. A proposed project that receives preliminary approval under this chapter may not add more beds than the number determined by the Indiana health facilities council to be necessary to provide an available bed for each person determined under IC 12-11-2.1 to be appropriate for placement in an ICF/MR facility. Upon completion of the proposed project and compliance with the other requirements for licensure under IC 16-28, the state department shall issue a license to the facility.

As added by P.L.2-1993, SEC.12. Amended by P.L.272-1999, SEC.52.

IC 16-36

ARTICLE 36. MEDICAL CONSENT

IC 16-36-1

Chapter 1. Health Care Consent

IC 16-36-1-1

Sec. 1. As used in this chapter, "health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. The term includes admission to a health care facility.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-2

Sec. 2. As used in this chapter, "representative" means an individual appointed to consent to health care of another under this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-3

Sec. 3. (a) Except as provided in subsections (b) and (c), unless incapable of consenting under section 4 of this chapter, an individual may consent to the individual's own health care if the individual is:

- (1) an adult; or
- (2) a minor and:
 - (A) is emancipated;
 - (B) is:
 - (i) at least fourteen (14) years of age;
 - (ii) not dependent on a parent for support;
 - (iii) living apart from the minor's parents or from an individual in loco parentis; and
 - (iv) managing the minor's own affairs;
 - (C) is or has been married;
 - (D) is in the military service of the United States; or
 - (E) is authorized to consent to the health care by any other statute.
- (b) A person at least seventeen (17) years of age is eligible to donate blood in a voluntary and noncompensatory blood program without obtaining parental permission.
- (c) An individual who has, suspects that the individual has, or has been exposed to a venereal disease is competent to give consent for medical or hospital care or treatment of the individual.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-4

YAMD.1993

Sec. 4. (a) An individual described in section 3 of this chapter may consent to health care unless, in the good faith opinion of the attending physician, the individual is incapable of making a decision regarding the proposed health care.

(b) A consent to health care under section 5, 6, or 7 of this chapter is not valid if the health care provider has knowledge that the individual has indicated contrary instructions in regard to the proposed health care, even if the individual is believed to be incapable of making a decision regarding the proposed health care at the time the individual indicates contrary instructions.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-5

Sec. 5. (a) If an individual incapable of consenting under section 4 of this chapter has not appointed a health care representative under section 7 of this chapter or the health care representative appointed under section 7 of this chapter is not reasonably available or declines to act, consent to health care may be given:

(1) by a judicially appointed guardian of the person or a representative appointed under section 8 of this chapter; or

(2) by a spouse, a parent, an adult child, or an adult sibling, unless disqualified under section 9 of this chapter, if:

(A) there is no guardian or other representative described in subdivision (1);

(B) the guardian or other representative is not reasonably available or declines to act; or

(C) the existence of the guardian or other representative is unknown to the health care provider; or

(3) by the individual's religious superior, if the individual is a member of a religious order and:

(A) there is no guardian or other representative described in subdivision (1);

(B) the guardian or other representative is not reasonably available or declines to act; or

(C) the existence of the guardian or other representative is unknown to the health care provider.

(b) Consent to health care for a minor not authorized to consent under section 3 of this chapter may be given by any of the following:

(1) A judicially appointed guardian of the person or a representative appointed under section 8 of this chapter.

(2) A parent or an individual in loco parentis if:

(A) there is no guardian or other representative described in subdivision (1);

(B) the guardian or other representative is not reasonably available or declines to act; or

(C) the existence of the guardian or other representative is unknown to the health care provider.

(3) An adult sibling of the minor if:

(A) there is no guardian or other representative described in subdivision (1);

(B) a parent or an individual in loco parentis is not reasonably available or declines to act; or

(C) the existence of the parent or individual in loco parentis is unknown to the health care provider.

(c) An individual delegated authority to consent under section 6 of this chapter has the same authority and responsibility as the individual

delegating the authority.

(d) An individual authorized to consent for another under this section shall act in good faith and in the best interest of the individual incapable of consenting.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-6

Sec. 6. (a) An individual authorized to consent to health care for another under section 5(a)(2), 5(b)(2), or 5(b)(3) of this chapter who for a time will not be reasonably available to exercise the authority may delegate the authority to consent during that time to another individual not disqualified under section 9 of this chapter. The delegation:

- (1) must be in writing;
- (2) must be signed by the delegate;
- (3) must be witnessed by an adult; and
- (4) may specify conditions on the authority delegated.

(b) Unless the writing expressly provides otherwise, the delegate may not delegate the authority to another individual.

(c) The delegate may revoke the delegation at any time by notifying orally or in writing the delegate or the health care provider.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-7

Sec. 7. (a) An individual who may consent to health care under section 3 of this chapter may appoint another individual as a representative to act for the appointor in matters affecting the appointor's health care.

(b) A representative appointed under this section must be an individual who may consent to health care under section 3 of this chapter.

(c) An appointment and any amendment must meet the following conditions:

- (1) Be in writing.
- (2) Be signed by the appointor or by a designee in the appointor's presence.
- (3) Be witnessed by an adult other than the representative.
- (d) The appointor may specify in the appointment appropriate terms and conditions, including an authorization to the representative to delegate the authority to consent to another.
- (e) The authority granted becomes effective according to the terms of the appointment.

(f) The appointment does not commence until the appointor becomes incapable of consenting. The authority granted in the appointment is not effective if the appointor regains the capacity to consent.

(g) Unless the appointment provides otherwise, a representative appointed under this section who is reasonably available and willing to act has priority to act in all matters of health care for the appointor, except when the appointor is capable of consenting.

(h) In making all decisions regarding the appointor's health care, a representative appointed under this section shall act as follows:

- (1) In the best interest of the appointor consistent with the purpose expressed in the appointment.
- (2) In good faith.

(i) A health care representative who resigns or is unwilling to comply with the written appointment may not exercise further power under the appointment and shall so inform the following:

- (1) The appointor.
- (2) The appointor's legal representative if one is known.
- (3) The health care provider if the representative knows there is one.

(j) An individual who is capable of consenting to health care may revoke:

- (1) the appointment at any time by notifying the representative orally or in writing; or
- (2) the authority granted to the representative by notifying the health care provider orally or in writing.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-8

Sec. 8. (a) A health care provider or any interested individual may petition the probate court in the county where the individual who is the subject of the petition is present for purposes of receiving health care to:

- (1) make a health care decision or order health care for an individual incapable of consenting; or
- (2) appoint a representative to act for the individual.

(b) Reasonable notice of the time and place of hearing a petition under this section must be given to the following:

- (1) The individual incapable of consenting.
 - (2) Anyone having the care and custody of the individual.
 - (3) Those individuals in the classes described in section 5 of this chapter who are reasonably available and who are designated by the court.
 - (c) The probate court may modify or dispense with notice and hearing if the probate court finds that delay will have a serious, adverse effect upon the health of the individual.
 - (d) The probate court may order health care, appoint a representative to make a health care decision for the individual incapable of consenting to health care with the limitations on the authority of the representative as the probate court considers appropriate, or order any other appropriate relief in the best interest of the individual if the probate court finds the following:
 - (1) A health care decision is required for the individual.
 - (2) The individual is incapable of consenting to health care.
 - (3) There is no individual authorized to consent or an individual authorized to consent to health care:
 - (A) is not reasonably available;
 - (B) declines to act; or
 - (C) is not acting in the best interest of the individual in need of health care.
- As added by P.L.2-1993, SEC.19.*

IC 16-36-1-9

- Sec. 9. (a) An individual who may consent to the individual's own health care under section 3 of this chapter may disqualify others from consenting to health care for the individual.
- (b) A disqualification must meet the following conditions:
- (1) Be in writing.
 - (2) Be signed by the individual.
 - (3) Designate those disqualified.
- (c) A health care provider who knows of a written disqualification may not accept consent to health care from a disqualified individual.
- (d) An individual who knows that the individual has been disqualified to consent to health care for another may not act for the other under this chapter.
- As added by P.L.2-1993, SEC.19.*

IC 16-36-1-10

- Sec. 10. (a) A health care provider acting or declining to act in reliance on the consent or refusal of consent of an individual who the provider believes in good faith is authorized to consent to health care is not subject to:
- (1) criminal prosecution;
 - (2) civil liability; or
 - (3) professional disciplinary action;
- on the ground that the individual who consented or refused to consent lacked authority or capacity.
- (b) A health care provider who believes in good faith that an individual is incapable of consenting is not subject to:
- (1) criminal prosecution;
 - (2) civil liability; or
 - (3) professional disciplinary action;
- for failing to follow the individual's direction.
- (c) A person who in good faith believes the person is authorized to consent or refuse to consent to health care for another under this chapter or another statute is not subject to:
- (1) criminal prosecution; or
 - (2) civil liability if the person exercises due care;
- on the ground that the person lacked authority to consent.
- As added by P.L.2-1993, SEC.19.*

IC 16-36-1-11

- Sec. 11. (a) An individual authorized to consent to health care for another individual under this chapter has the same right that the authorizing individual has to receive information relevant to the contemplated health care and to consent to the disclosure of medical records to a health care provider.
- (b) Disclosure of information regarding contemplated health care to an individual authorized to consent for

another is not a waiver of an evidentiary privilege or of the right to assert confidentiality.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-12

Sec. 12. (a) This chapter does not affect Indiana law concerning an individual's authorization to do the following:

- (1) Make a health care decision for the individual or another individual.
- (2) Provide, withdraw, or withhold medical care necessary to prolong or sustain life.
- (b) This chapter does not affect the requirements in any other Indiana law concerning consent to observation, diagnosis, treatment, or hospitalization for a mental illness.
- (c) This chapter does not authorize an individual to consent to any health care that is prohibited under Indiana law.
- (d) This chapter does not affect any requirement of notice to others of proposed health care under any other Indiana law.
- (e) This chapter does not affect Indiana law concerning the following:
 - (1) The standard of care of a health care provider required in the provision of health care.
 - (2) When consent is required for health care.
 - (3) Elements of informed consent for health care.
 - (4) Other methods of consent authorized by Indiana law.
 - (5) Health care being provided in an emergency without consent.
- (f) This chapter does not prevent an individual capable of consenting to the individual's own health care or to the health care of another under this chapter, including those authorized under sections 5 through 7 of this chapter, from consenting to health care administered in good faith under religious tenets of the individual requiring health care.
- (g) A representative consenting to health care for an individual under this chapter does not become personally liable for the cost of the health care by virtue of that consent.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-13

Sec. 13. This chapter does not authorize euthanasia.

As added by P.L.2-1993, SEC.19.

IC 16-36-1-14

Sec. 14. (a) The health care consent provisions under IC 30-5 are incorporated by reference into this chapter to the extent the provisions under IC 30-5 do not conflict with explicit requirements under this chapter.

(b) With respect to the written appointment of a health care representative under section 7 of this chapter, whenever the appointment authorizes health care to be withdrawn or withheld from an individual with a terminal condition (as defined in IC 16-36-4-5), the language in IC 30-5-5-17 must be included in the appointment in substantially the same form.

As added by P.L.2-1993, SEC.19.

IC 16-36-1.5

Chapter 1.5. Consent for Mental Health Services

IC 16-36-1.5-1

Sec. 1. This chapter does not apply when an individual is detained or committed under IC 12-26-4, IC 12-26-5, IC 12-26-6, or IC 12-26-7.

As added by P.L.145-1996, SEC.3.

IC 16-36-1.5-2

Sec. 2. As used in this chapter, "mental health provider" means any of the following:

- (1) A registered nurse or licensed practical nurse licensed under IC 25-23.
- (2) A clinical social worker licensed under IC 25-23.6-5.
- (3) A marriage and family therapist licensed under IC 25-23.6-8.
- (4) A psychologist licensed under IC 25-33.
- (5) A school psychologist licensed by the Indiana state board of education.
- (6) An individual who claims to be a mental health provider.

As added by P.L.145-1996, SEC.3. Amended by P.L.149-1997, SEC.1; P.L.147-1997, SEC.3.

IC 16-36-1.5-3

Sec. 3. As used in this chapter, "patient" means a person who is the recipient of mental health services.

As added by P.L.145-1996, SEC.3.

IC 16-36-1.5-4

Sec. 4. Before providing mental health services, a mental health provider must obtain consent from each patient.

As added by P.L.145-1996, SEC.3. Amended by P.L.111-1997, SEC.7; P.L.149-1997, SEC.2; P.L.253-1997(ss), SEC.19.

IC 16-36-1.5-4.5

Sec. 4.5. Before providing mental health services, a physician who is licensed under IC 25-22.5 must obtain consent from each patient as provided in IC 34-18-12.

As added by P.L.149-1997, SEC.3. Amended by P.L.1-1998, SEC.119

IC 16-36-1.5-5

Sec. 5. A patient who:

- (1) receives mental health services; and
- (2) is mentally incompetent;

shall provide consent for mental health treatment through the informed consent of one (1) of the following:

- (1) the patient's legal guardian or other court appointed representative.
- (2) The patient's health care representative under IC 16-36-1.
- (3) An attorney in fact for health care appointed under IC 30-5-5-16.

As added by P.L.145-1996, SEC.3. Amended by P.L.149-1997, SEC.4.

IC 16-36-1.5-6

Sec. 6. In order to comply with this chapter, a mental health provider needs to obtain only one (1) consent for mental health services for a patient while admitted in or treated as an outpatient at the main facility or a clinic of any of the following:

- (1) A psychiatric hospital (as defined in IC 12-7-2-151).
- (2) A hospital (as defined in IC 16-18-2-179(b)).
- (3) A community mental health center (as defined in IC 12-7-2-38).

As added by P.L.145-1996, SEC.3. Amended by P.L.149-1997, SEC.5.

IC 16-36-1.5-7

Sec. 7. If a patient's written consent is:

- (1) signed by the patient or the patient's authorized representative;
- (2) witnessed by an individual who is at least eighteen (18) years of age; and
- (3) explained, orally or in the written consent, to the patient or the patient's authorized representative before a treatment, procedure, examination, or test;

a rebuttable presumption is created that the consent is an informed consent.

As added by P.L.145-1996, SEC.3.

IC 16-36-1.5-8

(Repealed by P.L.149-1997, SEC.8.)

IC 16-36-1.5-9

(Repealed by P.L.149-1997, SEC.8.)

IC 16-36-1.5-10

Sec. 10. A mental health provider shall inform each patient of the mental health provider about:

- (1) the mental health provider's training and credentials;
 - (2) the reasonably foreseeable risks and relative benefits of proposed treatments and alternative treatments;
- and
- (3) the patient's right to withdraw consent for treatment at any time.

As added by P.L.149-1997, SEC.6.

IC 16-36-3**Chapter 3. Consent to Medical Treatment of Incompetent****IC 16-36-3-1**

Sec. 1. As used in this chapter, "appropriate facility" has the meaning set forth in IC 12-7-2-82(3).

As added by P.L.2-1993, SEC.19.

IC 16-36-3-2

Sec. 2. As used in this chapter, "superintendent" has the meaning set forth in IC 12-7-2-188(3).

As added by P.L.2-1993, SEC.19.

IC 16-36-3-3

Sec. 3. The methods of consent set forth in this chapter do not exclude other lawful methods of consent or require consent in an emergency.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-4

Sec. 4. Consent to medical or surgical treatment of a patient at an appropriate facility may be given by the superintendent under the procedures in this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-5

Sec. 5. If the superintendent and the patient's treating physician determine that:

- (1) the patient is incompetent to give informed consent to medical or surgical treatment, even though the patient has never been so adjudicated by a court; and
- (2) the treatment is medically necessary;

the superintendent shall obtain a second opinion on the issues listed in subdivisions (1) and (2) from a licensed physician independent of the appropriate facility.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-6

Sec. 6. In obtaining a second opinion as required by section 5 of this chapter, the superintendent shall compile a list of licensed physicians, organized by specialty. The superintendent must use an appropriate specialist from the list whenever possible. The physician chosen to give a second opinion must not be the same physician later chosen to perform the surgery that was the subject of the second opinion, unless an emergency exists.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-7

Sec. 7. The superintendent shall attempt to notify by certified mail any known relatives or friends of the patient of the patient's condition, the treatment determined to be necessary by the superintendent and the treating physician, and the result of the independent second opinion. To the extent possible given the urgency of the circumstances, the superintendent shall allow a reasonable time within which to receive responses of persons notified and shall consider the responses received before taking final action.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-8

Sec. 8. If the superintendent has followed the procedures in sections 4, 5, 6, and 7 of this chapter and the second opinion obtained under section 5 of this chapter concurs with the original determination of the superintendent and the patient's treating physician, the superintendent may give consent to the medical or surgical treatment of the patient.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-9

Sec. 9. A superintendent who, without malice, bad faith, or negligence, discloses confidential information in connection with the superintendent's compliance with section 7 of this chapter or consents to medical or surgical treatment of a patient after following the procedures required by this chapter is immune from any civil or criminal liability that might otherwise be imposed as a result of disclosing confidential information or giving or withholding the consent.

As added by P.L.2-1993, SEC.19.

IC 16-36-3-10

Sec. 10. The superintendent shall compile a report of all medically necessary treatments approved under this chapter during each calendar quarter and send the report to the director of the division of mental health or the director of the division of disability, aging, and rehabilitative services not more than one (1) month after the end of that quarter. The report must contain the following information:

- (1) The name of the patient.
- (2) The type of action taken.
- (3) The date of the action.
- (4) The reason for the action.
- (5) The names of the treating physician, the physician independent of the appropriate facility, and any other

physician who entered an opinion that was contrary to the treating physician's opinion.
As added by P.L.2-1993, SEC.19. Amended by P.L.40-1994, SEC.65.

IC 16-36-4

Chapter 4. Living Wills and Life Prolonging Procedures

IC 16-36-4-1

Sec. 1. (a) As used in this chapter, "life prolonging procedure" means any medical procedure, treatment, or intervention that does the following:

- (1) Uses mechanical or other artificial means to sustain, restore, or supplant a vital function.
- (2) Serves to prolong the dying process.

(b) The term does not include the performance or provision of any medical procedure or medication necessary to provide comfort care or to alleviate pain.

As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.1.

IC 16-36-4-2

Sec. 2. As used in this chapter, "life prolonging procedures will declarant" means a person who has executed a life prolonging procedures will declaration under section 11 of this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-3

Sec. 3. As used in this chapter, "living will declarant" means a person who has executed a living will declaration under section 10 of this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-4

Sec. 4. As used in this chapter, "qualified patient" means a patient who has been certified as a qualified patient under section 13 of this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-5

Sec. 5. As used in this chapter, "terminal condition" means a condition caused by injury, disease, or illness from which, to a reasonable degree of medical certainty:

- (1) there can be no recovery; and
- (2) death will occur from the terminal condition within a short period of time without the provision of life prolonging procedures.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-6

YAMD.1993

Sec. 6. A competent adult has the right to control the decisions relating to the competent adult's medical care, including the decision to have medical or surgical means or procedures calculated to prolong the competent adult's life provided, withheld, or withdrawn.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-7

Sec. 7. (a) A competent person may consent to or refuse consent for medical treatment, including life prolonging procedures.

(b) No health care provider is required to provide medical treatment to a patient who has refused medical treatment under this section.

(c) No civil or criminal liability is imposed on a health care provider for the failure to provide medical treatment to a patient who has refused the treatment in accordance with this section.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-8

Sec. 8. (a) A person who is of sound mind and is at least eighteen (18) years of age may execute a life prolonging procedures will declaration under section 11 of this chapter or a living will declaration under section 10 of this chapter.

(b) A declaration under section 10 or 11 of this chapter must meet the following conditions:

- (1) Be voluntary.
- (2) Be in writing.
- (3) Be signed by the person making the declaration or by another person in the declarant's presence and at the declarant's express direction.

- (4) Be dated.
- (5) Be signed in the presence of at least two (2) competent witnesses who are at least eighteen (18) years of age.
- (c) A witness to a living will declaration under subsection (b)(5) may not meet any of the following conditions:
 - (1) Be the person who signed the declaration on behalf of and at the direction of the declarant.
 - (2) Be a parent, spouse, or child of the declarant.
 - (3) Be entitled to any part of the declarant's estate whether the declarant dies testate or intestate, including whether the witness could take from the declarant's estate if the declarant's will is declared invalid.
 - (4) Be directly financially responsible for the declarant's medical care.
- For the purposes of subdivision (3), a person is not considered to be entitled to any part of the declarant's estate solely by virtue of being nominated as a personal representative or as the attorney for the estate in the declarant's will.
- (d) The living will declaration of a person diagnosed as pregnant by the attending physician has no effect during the person's pregnancy.
- (e) The life prolonging procedures will declarant or the living will declarant shall notify the declarant's attending physician of the existence of the declaration. An attending physician who is notified shall make the declaration or a copy of the declaration a part of the declarant's medical records.
- (f) A living will declaration under section 10 of this chapter:
 - (1) does not require the physician to use, withhold, or withdraw life prolonging procedures but is presumptive evidence of the patient's desires concerning the use, withholding, or withdrawal of life prolonging procedures under this chapter; and
 - (2) shall be given great weight by the physician in determining the intent of the patient who is mentally incompetent.
- (g) A life prolonging procedures will declaration under section 11 of this chapter does require the physician to use life prolonging procedures as requested.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-9

Sec. 9. A declaration must be substantially in the form set forth in either section 10 or 11 of this chapter, but the declaration may include additional, specific directions. The invalidity of any additional, specific directions does not affect the validity of the declaration.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-10

Sec. 10. The following is the living will declaration form:

LIVING WILL DECLARATION

Declaration made this ____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, and I declare:

If at any time my attending physician certifies in writing that: (1) I have an incurable injury, disease, or illness; (2) my death will occur within a short time; and (3) the use of life prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the performance or provision of any medical procedure or medication necessary to provide me with comfort care or to alleviate pain, and, if I have so indicated below, the provision of artificially supplied nutrition and hydration. (Indicate your choice by initialling or making your mark before signing this declaration):

_____ I wish to receive artificially supplied nutrition and hydration, even if the effort to sustain life is futile or excessively burdensome to me.

_____ I do not wish to receive artificially supplied nutrition and hydration, if the effort to sustain life is futile or excessively burdensome to me.

_____ I intentionally make no decision concerning artificially supplied nutrition and hydration, leaving the decision to my health care representative appointed under IC 16-36-1-7 or my attorney in fact with health care powers under IC 30-5-5.

In the absence of my ability to give directions regarding the use of life prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal

right to refuse medical or surgical treatment and accept the consequences of the refusal.
I understand the full import of this declaration.

Signed _____

City, County, and State of Residence

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not a parent, spouse, or child of the declarant. I am not entitled to any part of the declarant's estate or directly financially responsible for the declarant's medical care. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.2.

IC 16-36-4-11

Sec. 11. The following is the life prolonging procedures will declaration form:

LIFE PROLONGING PROCEDURES DECLARATION

Declaration made this _____ day of _____ (month, year). I, _____, being at least eighteen (18) years of age and of sound mind, willfully and voluntarily make known my desire that if at any time I have an incurable injury, disease, or illness determined to be a terminal condition I request the use of life prolonging procedures that would extend my life. This includes appropriate nutrition and hydration, the administration of medication, and the performance of all other medical procedures necessary to extend my life, to provide comfort care, or to alleviate pain.

In the absence of my ability to give directions regarding the use of life prolonging procedures, it is my intention that this declaration be honored by my family and physician as the final expression of my legal right to request medical or surgical treatment and accept the consequences of the request.

I understand the full import of this declaration.

Signed _____

City, County, and State of Residence

The declarant has been personally known to me, and I believe (him/her) to be of sound mind. I am competent and at least eighteen (18) years of age.

Witness _____ Date _____

Witness _____ Date _____

As added by P.L.2-1993, SEC.19.

IC 16-36-4-12

Sec. 12. (a) A living will declaration or a life prolonging procedures will declaration may be revoked at any time by the declarant by any of the following:

- (1) A signed, dated writing.
- (2) Physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction.
- (3) An oral expression of intent to revoke.
- (b) A revocation is effective when communicated to the attending physician.
- (c) No civil or criminal liability is imposed upon a person for failure to act upon a revocation unless the person had actual knowledge of the revocation.
- (d) The revocation of a life prolonging procedures will declaration is not evidence that the declarant desires to have life prolonging procedures withheld or withdrawn.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-13

Sec. 13. (a) The attending physician shall immediately certify in writing that a person is a qualified patient if the following conditions are met:

- (1) The attending physician has diagnosed the patient as having a terminal condition.
- (2) The patient has executed a living will declaration or a life prolonging procedures will declaration in accordance with this chapter and was of sound mind at the time of the execution.
- (b) The attending physician shall include a copy of the certificate in the patient's medical records.
- (c) It is lawful for the attending physician to withhold or withdraw life prolonging procedures from a qualified patient if that patient properly executed a living will declaration under this chapter.

- (d) A health care provider or an employee under the direction of a health care provider who:
- (1) in good faith; and
 - (2) in accordance with reasonable medical standards;
- participates in the withholding or withdrawal of life prolonging procedures from a qualified patient who has executed a living will declaration in accordance with this chapter is not subject to criminal or civil liability and may not be found to have committed an act of unprofessional conduct.
- (e) An attending physician who refuses to use, withhold, or withdraw life prolonging procedures from a qualified patient shall transfer the qualified patient to another physician who will honor the patient's living will declaration or life prolonging procedures will declaration unless:
- (1) the physician has reason to believe the declaration was not validly executed or there is evidence that the patient no longer intends the declaration to be enforced; and
 - (2) the patient is presently unable to validate the declaration.
- (f) If the attending physician, after reasonable investigation, finds no other physician willing to honor the patient's declaration, the attending physician may refuse to withhold or withdraw life prolonging procedures.
- (g) If the attending physician does not transfer a patient for the reason set forth in subsection (e), the physician shall attempt to ascertain the patient's intention and attempt to determine the validity of the declaration by consulting with any of the following individuals who are reasonably available, willing, and competent to act:
- (1) The judicially appointed guardian of the person of the patient if one has been appointed. This subdivision does not require the appointment of a guardian so that a treatment decision can be made under this section.
 - (2) The person or persons designated by the patient in writing to make the treatment decision.
 - (3) The patient's spouse.
 - (4) An adult child of the patient or, if the patient has more than one (1) adult child, by a majority of the children who are reasonably available for consultation.
 - (5) The parents of the patient.
 - (6) An adult sibling of the patient or, if the patient has more than one (1) adult sibling, by a majority of the siblings who are reasonably available for consultation.
 - (7) The patient's clergy or others with firsthand knowledge of the patient's intention.
- The individuals described in subdivisions (1) through (7) shall act in the best interest of the patient and shall be guided by the patient's express or implied intentions, if known.
- (h) The physician shall list the names of the individuals described in subsection (g) who were consulted and the information received in the patient's medical records.
- (i) If the attending physician determines from the information received under subsection (g) that the qualified patient intended to execute a valid living will declaration, the physician may either:
- (1) withhold or withdraw life prolonging procedures, with the concurrence of one (1) other physician, as documented in the patient's medical records; or
 - (2) request a court of competent jurisdiction to appoint a guardian for the patient to make the consent decision on behalf of the patient.

As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.3.

IC 16-36-4-14

YAMD.1993

Sec. 14. If the qualified patient who executed a living will declaration is incompetent at the time of the decision to withhold or withdraw life prolonging procedures, a living will declaration executed in accordance with this chapter is presumed to be valid. For purposes of this chapter, a health care provider may presume in the absence of actual notice to the contrary that the declarant was of sound mind when the living will declaration was executed. The fact that the declarant executed a declaration may not be considered as an indication of a declarant's mental incompetency.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-15

Sec. 15. A person who knowingly or intentionally:

- (1) physically cancels or destroys a living will declaration or a life prolonging procedures will declaration without the declarant's consent; or
- (2) falsifies or forges a revocation of another person's living will

declaration or life prolonging procedures will declaration;
commits a Class D felony.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-16

Sec. 16. A person who knowingly or intentionally:

- (1) falsifies or forges the living will declaration of another person with intent to cause withholding or withdrawal of life prolonging procedures; or
 - (2) conceals or withholds personal knowledge of the revocation of a living will declaration with intent to cause a withholding or withdrawal of life prolonging procedures;
- commits a Class C felony.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-17

Sec. 17. (a) A death caused by the withholding or withdrawal of life prolonging procedures in accordance with this chapter does not constitute a suicide.

(b) The execution of a living will declaration or a life prolonging procedures will declaration under this chapter does not:

- (1) affect the sale or issuance of any life insurance policy; or
 - (2) modify the terms of a policy in force when the declaration is executed.
- (c) A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life prolonging procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.
- (d) A person may not require another person to execute a living will declaration or a life prolonging procedures will declaration as a condition for being insured for or receiving health care services.
- (e) This chapter does not impair or supersede any legal right or legal responsibility that any person may have to effect the withholding or withdrawal of life prolonging procedures in any lawful manner.

(f) A person who has been found:

- (1) guilty; or
- (2) guilty but mentally ill;

of an offense described in section 16 of this chapter is subject to IC 29-1-2-12.1.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-18

Sec. 18. This chapter creates no presumption concerning the intention of a person who has not executed a living will declaration to consent to the withholding or withdrawal of life prolonging procedures if a terminal condition exists.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-19

Sec. 19. This chapter does not authorize euthanasia or any affirmative or deliberate act or omission to end life other than to permit the natural process of dying, including the withholding or withdrawing of life prolonging procedures under this chapter.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-20

Sec. 20. The act of withholding or withdrawing life prolonging procedures, when done under:

- (1) a living will declaration made under this chapter;
 - (2) a court order or decision of a court appointed guardian; or
 - (3) a good faith medical decision by the attending physician that the patient has a terminal condition;
- is not an intervening force and does not affect the chain of proximate cause between the conduct of any person that placed the patient in a terminal condition and the patient's death.

As added by P.L.2-1993, SEC.19.

IC 16-36-4-21

Sec. 21. A physician who knowingly violates this chapter is subject to disciplinary sanctions under IC 25-1-9 as if the physician had knowingly violated a rule adopted by the medical licensing board under IC 25-22.5-2-7.

As added by P.L.2-1993, SEC.19.

IC 16-39

ARTICLE 39. HEALTH RECORDS

IC 16-39-1

Chapter 1. Release of Health Records to Patient and Authorized Persons

IC 16-39-1-1

Sec. 1. (a) This section applies to all health records except mental health records, which are governed by IC 16-39-2, IC 16-39-3, and IC 16-39-4.

(b) This article applies to all health records, except:

(1) records regarding communicable diseases, which are governed by IC 16-41-8-1; or

(2) records regarding alcohol and other drug abuse patient records, which are governed by 42 CFR, Part 2.

(c) On written request and reasonable notice, a provider shall supply to a patient the health records possessed by the provider concerning the patient. Information regarding contact lenses must be given using the following guidelines:

(1) After the release of a patient from an initial fitting and follow-up period of not more than six (6) months, the contact lens prescription must be released to the patient at the patient's request.

(2) A prescription released under subdivision (1) must contain all information required to properly duplicate the contact lenses.

(3) A contact lens prescription must include the following:

(A) An expiration date of not more than one (1) year.

(B) The number of refills permitted.

(4) Instructions for use must be consistent with:

(A) recommendations of the contact lens manufacturer;

(B) clinical practice guidelines; and

(C) the professional judgment of the prescribing optometrist or physician licensed under IC 25-22.5.

After the release of a contact lens prescription under this subsection, liability for future fittings or dispensing of contact lenses under the original prescription lies with the dispensing company or practitioner.

(d) On a patient's written request and reasonable notice, a provider shall furnish to the patient or the patient's designee the following:

(1) A copy of the patient's health record used in assessing the patient's health condition.

(2) At the option of the patient, the pertinent part of the patient's health record relating to a specific condition, as requested by the patient.

(e) A request made under this section is valid for sixty (60) days after the date the request is made.

As added by P.L.2-1993, SEC.22. Amended by P.L.40-1994, SEC.66; P.L.102-1994, SEC.1; P.L.2-1995, SEC.72; P.L.108-1996, SEC.4.

IC 16-39-1-2

IC 16-39-1-2 Sec. 2. Upon a patient's written request and reasonable notice, a provider shall, at the provider's actual costs, provide to the patient or the patient's designee:

(1) access to; or

(2) a copy of;

the patient's x-ray film possessed by the provider.

As added by P.L.2-1993, SEC.22.

IC 16-39-1-3

Sec. 3. (a) Health records may be requested by a competent patient if the patient is:

(1) emancipated and less than eighteen (18) years of age; or

(2) at least eighteen (18) years of age.

(b) If a patient is incompetent, the request for health records may be made by the parent, guardian, or custodian of the patient.

(c) Health records of a deceased patient may be requested by a coroner under IC 36-2-14-21 or by the personal representative of the patient's estate. If the deceased does not have a personal representative, the spouse of the deceased patient may make a request. If there is no spouse:

(1) a child of the deceased patient; or

(2) the parent, guardian, or custodian of the child if the child is incompetent;

may make a request.

As added by P.L.2-1993, SEC.22. Amended by P.L.28-2002, SEC.1.

IC 16-39-1-4

Sec. 4. Except as provided in IC 16-39-5, a patient's written consent for release of the patient's health record must include the following:

- (1) The name and address of the patient.
- (2) The name of the person requested to release the patient's record.
- (3) The name of the person or provider to whom the patient's health record is to be released.
- (4) The purpose of the release.
- (5) A description of the information to be released from the health record.
- (6) The signature of the patient, or the signature of the patient's legal representative if the patient is incompetent.
- (7) The date on which the consent is signed.
- (8) A statement that the consent is subject to revocation at any time, except to the extent that action has been taken in reliance on the consent.
- (9) The date, event, or condition on which the consent will expire if not previously revoked.

As added by P.L.2-1993, SEC.22.

IC 16-39-1-5

Sec. 5. If a provider who is a health care professional reasonably determines that the information requested under section 1 of this chapter is:

- (1) detrimental to the physical or mental health of the patient; or
 - (2) likely to cause the patient to harm the patient or another;
- the provider may withhold the information from the patient.

As added by P.L.2-1993, SEC.22.

IC 16-39-1-6

Sec. 6. This chapter does not authorize a patient to obtain a copy of the patient's health records while the patient is an inpatient of a hospital, health facility, or facility licensed under IC 12-24 or IC 12-29.

However, if the inpatient is:

- (1) unemancipated and less than eighteen (18) years of age, a parent, guardian, or next of kin (if the patient does not have a parent or guardian) is entitled to obtain a copy of the health records of the inpatient;
- (2) incompetent to request the patient's own health records, a spouse, parent, guardian, or next of kin (if the patient does not have a parent, spouse, or guardian) is entitled to obtain a copy of the health records of the inpatient; or
- (3) competent, a spouse, parent or next of kin (if the patient does not have a parent or spouse) is entitled to obtain a copy of the health records of the inpatient if the inpatient requests that the records be released.

As added by P.L.2-1993, SEC.22.

IC 16-39-1-7

Sec. 7. (a) Except as provided in subsection (b), a custodial parent and a noncustodial parent of a child have equal access to the parents' child's health records.

(b) A provider may not allow a noncustodial parent access to the child's health records if:

- (1) a court has issued an order that limits the noncustodial parent's access to the child's health records; and
 - (2) the provider has received a copy of the court order or has actual knowledge of the court order.
- (c) If a provider incurs additional expense by allowing a parent equal access to health records under this section, the provider may require the parent requesting the equal access to pay a fee to cover the cost of the additional expense.

As added by P.L.2-1993, SEC.22.

IC 16-39-1-8

Sec. 8. Except as provided in section 2 of this chapter, IC 16-39-9 governs the fees that may be charged for making and providing copies of records under this chapter.

As added by P.L.102-1994, SEC.2.

IC 16-39-1-9

Sec. 9. Alcohol and drug abuse records described in 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 may not be disclosed unless authorized in accordance with 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3.

As added by P.L.4-1997, SEC.3.

IC 16-39-2

Chapter 2. Release of Mental Health Records to Patient and Authorized Persons

IC 16-39-2-1

Sec. 1. This chapter applies only to mental health records.

As added by P.L.2-1993, SEC.22.

IC 16-39-2-2

Sec. 2. A record for each patient receiving mental health services shall be maintained by the provider. The mental health record must contain the information that the division of mental health, the division of disability, aging, and rehabilitative services, or the state department requires by rule. The provider is:

- (1) the owner of the mental health record;
- (2) responsible for the record's safekeeping; and
- (3) entitled to retain possession of the record.

The information contained in the mental health record belongs to the patient involved as well as to the provider. The provider shall maintain the original mental health record or a microfilm of the mental health record for at least seven (7) years.

As added by P.L.2-1993, SEC.22. Amended by P.L.40-1994, SEC.67; P.L.4-1997, SEC.4.

IC 16-39-2-3

Sec. 3. A patient's mental health record is confidential and shall be disclosed only with the consent of the patient unless otherwise provided in the following:

- (1) This chapter.
- (2) IC 16-39-3.
- (3) IC 16-39-4.
- (4) IC 16-39-5-3.

As added by P.L.2-1993, SEC.22.

IC 16-39-2-4

Sec. 4. A patient is entitled to inspect and copy the patient's own mental health record. However, if the provider that is responsible for the patient's mental health records determines for good medical cause, upon the advice of a physician, that the information requested under this section is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm the patient or another person, the provider may withhold the information from the patient. If the provider is a state institution or agency, the patient may appeal the provider's refusal to permit the patient to inspect and copy the patient's own record under IC 4-21.5.

As added by P.L.2-1993, SEC.22.

IC 16-39-2-5

Sec. 5. (a) This section applies to private and public treating providers.

(b) Upon a patient's written request and reasonable notice, a

patient's mental health record shall be made available for inspection and copying by the provider at any time to an individual or organization designated by the patient or to the patient's legal representative.

(c) A patient's written request for the release of the patient's mental health record under this section must include the following:

- (1) The name of the patient.
- (2) The name of the person requested to release the patient's mental health record.
- (3) The name of the person, provider, or organization to whom the patient's mental health record is to be released.
- (4) The purpose of the release.
- (5) A description of the information to be released from the mental health record.
- (6) The signature of the patient.
- (7) The date the request is signed.
- (8) A statement that the patient's consent to release of mental health records is subject to revocation at any time, except to the extent that action has been taken in reliance on the patient's consent.
- (9) The date, event, or condition on which the patient's consent to release of mental health records will expire if not previously revoked.

(d) Unless otherwise specified in a written request under this section, a request for release of records is valid for one hundred eighty (180) days after the date the request is made.

(e) A request for release of records under this section may be revoked by the patient at any time, except to

the extent that action has been taken in reliance on the consent.

(f) Mental health records requested by the patient to be released under this section may be released by the provider receiving the request, regardless of whether the patient is still receiving services from the provider. *As added by P.L.2-1993, SEC.22. Amended by P.L.4-1997, SEC.5.*

IC 16-39-2-6a

Note: This version of section effective until 7-1-99. See also following version of this section, effective 7-1-99.

Sec. 6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed as follows:

(1) To individuals who meet the following conditions:

(A) Are employed by:

(i) the provider at the same facility or agency;

(ii) a managed care provider (as defined in IC 12-7-2-127(b)); or

(iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient.

(B) Are involved in the planning, provision, and monitoring of services.

(2) To the extent necessary to obtain payment for services rendered or other benefits to which the patient may be entitled, as provided in IC 16-39-5-3.

(3) To the patient's court appointed counsel and to the Indiana protection and advocacy services commission.

(4) For research conducted in accordance with IC 16-39-5-3 and the rules of the division of mental health, the rules of the division of disability, aging, and rehabilitative services, or the rules of the provider.

(5) To the division of mental health for the purpose of data collection, research, and monitoring managed care providers (as defined in IC 12-7-2-127(b)) who are operating under a contract with the division of mental health.

(6) To the extent necessary to make reports or give testimony required by the statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.

(7) To a law enforcement agency if any of the following conditions are met:

(A) A patient escapes from a facility to which the patient is committed under IC 12-26.

(B) The superintendent of the facility determines that failure to provide the information may result in bodily harm to the patient or another individual.

(C) A patient commits or threatens to commit a crime on facility premises or against facility personnel.

(D) A patient is in the custody of a law enforcement officer or agency for any reason and:

(i) the information to be released is limited to medications currently prescribed for the patient or to the patient's history of adverse medication reactions; and

(ii) the provider determines that the release of the medication information will assist in protecting the health, safety, or welfare of the patient.

Mental health records released under this clause must be maintained in confidence by the law enforcement agency receiving them.

(8) To a coroner or medical examiner, in the performance of the individual's duties.

(9) To a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of a person with a disability under 20 U.S.C. 1400 et seq.

(10) To the extent necessary to satisfy reporting requirements under the following statutes:

(A) IC 12-10-3-10.

(B) IC 12-17-2-16.

(C) IC 12-24-17-5.

(D) IC 16-41-2-3.

(E) IC 31-33-5-4.

(F) IC 34-30-16-2.

(G) IC 35-46-1-13.

(11) To the extent necessary to satisfy release of information requirements under the following statutes:

(A) IC 12-24-11-2.

(B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.

(C) IC 12-26-11.

- (12) To another health care provider in a health care emergency.
- (13) For legitimate business purposes as described in IC 16-39-5-3.
- (14) Under a court order under IC 16-39-3.
- (15) With respect to records from a mental health or developmental disability facility, to the United States Secret Service if the following conditions are met:
 - (A) The request does not apply to alcohol or drug abuse records described in 42 U.S.C. 290dd-2 unless authorized by a court order under 42 U.S.C. 290dd-2(b)(2)(c).
 - (B) The request relates to the United States Secret Service's protective responsibility and investigative authority under 18 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.
 - (C) The request specifies an individual patient.
 - (D) The director or superintendent of the facility determines that disclosure of the mental health record may be necessary to protect a person under the protection of the United States Secret Service from serious bodily injury or death.
 - (E) The United States Secret Service agrees to only use the mental health record information for investigative purposes and not disclose the information publicly.
- (F) The mental health record information disclosed to the United States Secret Service includes only:
 - (i) the patient's name, age, and address;
 - (ii) the date of the patient's admission to or discharge from the facility; and
 - (iii) any information that indicates whether or not the patient has a history of violence or presents a danger to the person under protection.
- (b) After information is disclosed under subsection (a)(15) and if the patient is evaluated to be dangerous, the records shall be interpreted in consultation with a licensed mental health professional on the staff of the United States Secret Service.
- (c) A person who discloses information under subsection (a)(7) or (a)(15) in good faith is immune from civil and criminal liability.

As added by P.L.2-1993, SEC.22. Amended by P.L.23-1993, SEC.77; P.L.40-1994, SEC.68; P.L.6-1995, SEC.37; P.L.149-1996, SEC.1; P.L.1-1997, SEC.95; P.L.4-1997, SEC.6; P.L.111-1997, SEC.8; P.L.253-1997(ss), SEC.20; P.L.1-1998, SEC.120; P.L.1-1999, SEC.46.

Note: See also following version of this section, effective 7-1-99.

IC 16-39-2-6b

Note: This version of section effective 7-1-99. See also preceding version of this section, effective until 7-1-99.

Sec. 6. (a) Without the consent of the patient, the patient's mental health record may only be disclosed as follows:

- (1) To individuals who meet the following conditions:
 - (A) Are employed by:
 - (i) the provider at the same facility or agency;
 - (ii) a managed care provider (as defined in IC 12-7-2-127(b)); or
 - (iii) a health care provider or mental health care provider, if the mental health records are needed to provide health care or mental health services to the patient.
 - (B) Are involved in the planning, provision, and monitoring of services.
- (2) To the extent necessary to obtain payment for services rendered or other benefits to which the patient may be entitled, as provided in IC 16-39-5-3.
- (3) To the patient's court appointed counsel and to the Indiana protection and advocacy services commission.
- (4) For research conducted in accordance with IC 16-39-5-3 and the rules of the division of mental health, the rules of the division of disability, aging, and rehabilitative services, or the rules of the provider.
- (5) To the division of mental health for the purpose of data collection, research, and monitoring managed care providers (as defined in IC 12-7-2-127(b)) who are operating under a contract with the division of mental health.
- (6) To the extent necessary to make reports or give testimony required by the statutes pertaining to admissions, transfers, discharges, and guardianship proceedings.
- (7) To a law enforcement agency if any of the following conditions are met:
 - (A) A patient escapes from a facility to which the patient is committed under IC 12-26.
 - (B) The superintendent of the facility determines that failure to provide the information may result in bodily harm to the patient or another individual.

(C) A patient commits or threatens to commit a crime on facility premises or against facility personnel.

(D) A patient is in the custody of a law enforcement officer or agency for any reason and:

(i) the information to be released is limited to medications currently prescribed for the patient or to the patient's history of adverse medication reactions; and

(ii) the provider determines that the release of the medication information will assist in protecting the health, safety, or welfare of the patient.

Mental health records released under this clause must be maintained in confidence by the law enforcement agency receiving them.

(8) To a coroner or medical examiner, in the performance of the individual's duties.

(9) To a school in which the patient is enrolled if the superintendent of the facility determines that the information will assist the school in meeting educational needs of a person with a disability under 20 U.S.C. 1400 et seq.

(10) To the extent necessary to satisfy reporting requirements under the following statutes:

(A) IC 12-10-3-10.

(B) IC 12-17-2-16.

(C) IC 12-24-17-5.

(D) IC 16-41-2-3.

(E) IC 31-33-5-4.

(F) IC 34-30-16-2.

(G) IC 35-46-1-13.

(11) To the extent necessary to satisfy release of information requirements under the following statutes:

(A) IC 12-24-11-2.

(B) IC 12-24-12-3, IC 12-24-12-4, and IC 12-24-12-6.

(C) IC 12-26-11.

(12) To another health care provider in a health care emergency.

(13) For legitimate business purposes as described in IC 16-39-5-3.

(14) Under a court order under IC 16-39-3.

(15) With respect to records from a mental health or developmental disability facility, to the United States Secret Service if the following conditions are met:

(A) The request does not apply to alcohol or drug abuse records described in 42 U.S.C. 290dd-2 unless authorized by a court order under 42 U.S.C. 290dd-2(b)(2)(c).

(B) The request relates to the United States Secret Service's protective responsibility and investigative authority under 18 U.S.C. 3056, 18 U.S.C. 871, or 18 U.S.C. 879.

(C) The request specifies an individual patient.

(D) The director or superintendent of the facility determines that disclosure of the mental health record may be necessary to protect a person under the protection of the United States Secret Service from serious bodily injury or death.

(E) The United States Secret Service agrees to only use the mental health record information for investigative purposes and not disclose the information publicly.

(F) The mental health record information disclosed to the United States Secret Service includes only:

(i) the patient's name, age, and address;

(ii) the date of the patient's admission to or discharge from the facility; and

(iii) any information that indicates whether or not the patient has a history of violence or presents a danger to the person under protection.

(16) To the statewide waiver ombudsman established under IC 12-11-13, in the performance of the ombudsman's duties.

(b) After information is disclosed under subsection (a)(15) and if the patient is evaluated to be dangerous, the records shall be interpreted in consultation with a licensed mental health professional on the staff of the United States Secret Service.

(c) A person who discloses information under subsection (a)(7) or (a)(15) in good faith is immune from civil and criminal liability.

As added by P.L.2-1993, SEC.22. Amended by P.L.23-1993, SEC.77;

P.L.40-1994, SEC.68; P.L.6-1995, SEC.37; P.L.149-1996, SEC.1; P.L.1-1997, SEC.95; P.L.4-1997, SEC.6; P.L.111-1997, SEC.8; P.L.253-1997(ss), SEC.20; P.L.1-1998, SEC.120; P.L.1-1999, SEC.46;

P.L.272-1999, SEC.53.

Note: See also preceding version of this section, effective until 7-1-99.

IC 16-39-2-7

Sec. 7. Except as provided in section 8 of this chapter, the mental health record is not discoverable or admissible in any legal proceeding without the consent of the patient.

As added by P.L.2-1993, SEC.22.

IC 16-39-2-8

Sec. 8. The court may order the release of the patient's mental health record without the patient's consent upon the showing of good cause following a hearing under IC 16-39-3 or in a proceeding under IC 31-30 through IC 31-40 following a hearing held under the Indiana Rules of Trial Procedure.

As added by P.L.2-1993, SEC.22. Amended by P.L.1-1997, SEC.96.

IC 16-39-2-9

Sec. 9. (a) For the purposes of this chapter, the following persons are entitled to exercise the patient's rights on the patient's behalf:

- (1) If the patient is a minor, the parent, guardian, or other court appointed representative of the patient.
- (2) If the provider determines that the patient is incapable of giving or withholding consent, the patient's guardian, a court appointed representative of the patient, a person possessing a health care power of attorney for the patient, or the patient's health care representative.

(b) A custodial parent and a noncustodial parent of a child have equal access to the child's mental health records unless:

- (1) a court has issued an order that limits the noncustodial parent's access to the child's mental health records; and
- (2) the provider has received a copy of the court order or has actual knowledge of the court order.

If the provider incurs an additional expense by allowing a parent equal access to a child's mental health records, the provider may require the parent requesting the equal access to pay a fee under IC 16-39-9 to cover the cost of the additional expense.

As added by P.L.2-1993, SEC.22. Amended by P.L.4-1997, SEC.7.

IC 16-39-2-10

Sec. 10. For the purposes of this chapter, consent to the release of a deceased patient's record may be given by the personal representative of the patient's estate. If there is no appointment of a personal representative, consent may be given by:

- (1) the patient's spouse; or
- (2) if there is no spouse, any responsible member of the patient's family, including a parent, guardian, or custodian of the deceased patient's minor child.

As added by P.L.2-1993, SEC.22. Amended by P.L.4-1997, SEC.8.

IC 16-39-2-11

Sec. 11. IC 16-39-9 governs the fees that may be charged for making and providing copies of records under this chapter.

As added by P.L.2-1993, SEC.22. Amended by P.L.102-1994, SEC.3.

IC 16-39-2-12

Sec. 12. This chapter does not prohibit the application to mental health records of any law concerning health records that is not addressed by this chapter.

As added by P.L.4-1997, SEC.9.

IC 16-39-3

Chapter 3. Release of Mental Health Records in Investigations and Legal Proceedings

IC 16-39-3-1

Sec. 1. This chapter applies only to mental health records.

As added by P.L.2-1993, SEC.22.

IC 16-39-3-2

(Repealed by P.L.4-1997, SEC.14.)

IC 16-39-3-3

Sec. 3. A person:

- (1) seeking access to a patient's mental health record without the patient's written consent in an

investigation or prosecution resulting from a report filed under IC 16-39-2-6(10); or
(2) who has filed or is a party to a legal proceeding and who seeks access to a patient's mental health record without the patient's written consent;
may file a petition in a circuit or superior court requesting a release of the patient's mental health record.
As added by P.L.2-1993, SEC.22. Amended by P.L.108-1996, SEC.5.

IC 16-39-3-4

Sec. 4. Except as provided in section 8 of this chapter, notice of a hearing to be conducted under this chapter shall be served at least fifteen (15) days in advance on the following:

- (1) The patient.
- (2) The guardian, guardian ad litem or court appointed special advocate appointed for a minor, parent, or custodian of a patient who is incompetent.
- (3) The provider that maintains the record or the attorney general if the provider is a state institution.

As added by P.L.2-1993, SEC.22.

IC 16-39-3-5

Sec. 5. If a patient has an attorney, the patient has the right to have an attorney present at a hearing conducted under this chapter. The notice served under section 4 of this chapter must state the patient's right to have an attorney present if the patient has an attorney. If the patient is under an inpatient commitment to a mental health facility at the time a petition under section 3 of this chapter is filed and the patient is unable to afford an attorney, the court shall appoint an attorney for the patient.

As added by P.L.2-1993, SEC.22.

IC 16-39-3-6

Sec. 6. A hearing under this chapter shall be conducted in a manner that preserves the confidentiality of the record of the hearing.

As added by P.L.2-1993, SEC.22.

IC 16-39-3-7

Sec. 7. At the conclusion of the hearing, the court may order the release of the patient's mental health record if the court finds by a preponderance of the evidence that:

- (1) other reasonable methods of obtaining the information are not available or would not be effective; and
- (2) the need for disclosure outweighs the potential harm to the patient. In weighing the potential harm to the patient, the court shall consider the impact of disclosure on the provider-patient privilege and the patient's rehabilitative process.

As added by P.L.2-1993, SEC.22.

IC 16-39-3-8

Sec. 8. If an emergency exists in which a child is alleged to be a child in need of services under IC 31-34-1 and the county office of family and children seeks access to the mental health records of the parent, guardian, or custodian of the child as a part of a preliminary inquiry under IC 31-34-7, the county office may file a verified petition, which sets forth the facts the county office alleges constitute an emergency, seeking an emergency hearing under this section. A request for access to a patient's mental health record under this section shall be heard by the court having jurisdiction under IC 31-30 through IC 31-40. Notice of a hearing to be conducted under this section shall be served not later than twenty-four (24) hours before the hearing to all persons entitled to receive notice under section 4 of this chapter. If actual notice cannot be given, the county office shall file with the court an affidavit stating that verbal notice or written notice left at the last known address of the respondent was attempted not less than twenty-four (24) hours before the hearing. A hearing under this section shall be held not later than forty-eight (48) hours after the petition for an emergency hearing is filed. The court shall enter written findings concerning the release or denial of the release of the mental health records of the parent, guardian, or custodian. The court shall order the release of the mental health records if the court finds the following by a preponderance of the evidence:

- (1) Other reasonable methods of obtaining the information sought are not available or would not be effective.
- (2) The need for disclosure in the best interests of the child outweighs the potential harm to the patient caused by a necessary disclosure. In weighing the potential harm to the patient, the court shall consider the impact of disclosure on the provider-patient relationship and the patient's rehabilitative process.

As added by P.L.2-1993, SEC.22. Amended by P.L.4-1993, SEC.245; P.L.5-1993, SEC.258; P.L.1-1997, SEC.97.

IC 16-39-3-9

Sec. 9. A court order authorizing release of a patient's mental health record under this chapter must do the following:

- (1) Limit disclosure to those parts of the patient's record that are essential to fulfill the objective of the order.
- (2) Limit disclosure to those persons whose need for information is the basis of the order.
- (3) Include other measures necessary to limit disclosure for the protection of the patient, the provider-patient privilege, and the rehabilitative process.

As added by P.L.2-1993, SEC.22.

IC 16-39-3-10

Sec. 10. If a patient's mental health record or testimony related to a patient's mental health is offered or admitted into evidence in a legal proceeding, the court shall maintain the record or transcript of the testimony as a confidential court record. The record or transcript may not be used in any other proceeding or for any other purpose.

As added by P.L.2-1993, SEC.22.

IC 16-39-3-11

Sec. 11. Except as provided in section 8 of this chapter:

- (1) this chapter;
- (2) the hearing process described in this chapter; and
- (3) the standards described in this chapter;

do not apply to proceedings under IC 31-30 through IC 31-40. A proceeding for access to a patient's mental health records under IC 31-30 through IC 31-40 is subject to the Indiana Rules of Trial Procedure.

As added by P.L.2-1993, SEC.22. Amended by P.L.1-1997, SEC.98.

IC 16-39-3-12

Sec. 12. IC 16-39-9 governs the fees that may be charged for making and providing copies of records under this chapter.

As added by P.L.102-1994, SEC.4.

IC 16-39-3-13

Sec. 13. This chapter does not prohibit the application to mental health records of any law concerning health records that is not addressed by this chapter.

As added by P.L.4-1997, SEC.10.

IC 16-39-4**Chapter 4. Provision of Mental Health Information****IC 16-39-4-1**

Sec. 1. This chapter applies only to patients receiving mental health services.

As added by P.L.2-1993, SEC.22.

IC 16-39-4-2

Sec. 2. (a) As used in this section, "primary caregiver" means an individual who provides for the physical, emotional, and social needs of another individual who cannot provide for the other individual's own needs.

(b) Upon the written request of a patient's:

- (1) spouse;
- (2) parent if:
 - (A) the patient does not have a spouse; or
 - (B) the parent is the primary caregiver to the patient;
- (3) adult child if the patient has neither a spouse nor a parent;
- (4) sibling if the patient has neither a spouse, a parent, nor an adult child; or
- (5) guardian, guardian ad litem, or court appointed special guardian;

who is involved in the planning, provision, and monitoring of mental health services delivered to the patient and the written consent of the treating physician for the patient, the provider shall provide the individual described in subdivision (1), (2), (3), (4), or (5) with the information described in section 3 of this chapter.

As added by P.L.2-1993, SEC.22. Amended by P.L.189-1995, SEC.2.

IC 16-39-4-3

Sec. 3. If a provider has received a written request under section 2 of this chapter, the provider shall provide the individual who made the request with the following information:

- (1) A summary of the patient's diagnosis.
- (2) A summary of the information required to be given to the patient under IC 12-27-6-2 and IC 12-27-6-3.
- (3) The types of medication that have been prescribed for the patient.
- (4) A summary of the patient's prognosis.

As added by P.L.2-1993, SEC.22.

IC 16-39-4-4

Sec. 4. IC 16-39-9 governs the fees that may be charged for making and providing copies of records under this chapter.

As added by P.L.2-1993, SEC.22. Amended by P.L.102-1994, SEC.5.

IC 16-39-4-5

Sec. 5. (a) This section does not apply to the following:

- (1) An institution licensed under IC 12-25.
 - (2) A hospital licensed under IC 16-21.
 - (3) A treatment facility certified under IC 12-23-1-6.
 - (4) A state institution listed under IC 12-24-1.
- (b) This section applies only to a patient's mental health records.
- (c) A patient, or the patient's legal representative if the patient is incompetent, who consents in writing to the release of information to an insurer that has issued a policy of accident and sickness insurance (as defined in IC 27-8-5-1) covering the patient, authorizes the provider to disclose the following information to the insurer:
- (1) The patient's name and the policy or contract number.
 - (2) The date the patient was admitted to a treatment facility or the date the patient began receiving mental health, mental retardation, or substance abuse (as defined in IC 27-8-5-15.5) services.
 - (3) The date of the beginning of the patient's illness.
 - (4) The date the patient was discharged from the treatment facility or the date the services were terminated, if known.
 - (5) The diagnosis for the patient with concise information substantiating the diagnosis.
 - (6) A brief description of the services provided to the patient, including the type of therapy used, medications ordered and administered, the total number of hours spent in individual, group, or family treatment, recreational therapy, or rehabilitation activities.
 - (7) The patient's status as either an inpatient or outpatient.
 - (8) The patient's relationship to the policyholder or contract subscriber.
 - (9) The patient's prognosis and plan of treatment.

An insurer's request for the release of additional mental health information relating to subdivisions (1) through (9) does not require a further release in order for the provider to submit the additional information to the insurer. The provider may release to the insurer mental health information in addition to that reasonably related to subdivisions (1) through (9) if an additional written consent is obtained from the patient or the patient's representative authorizing the release of all information necessary for the insurer to adjudicate a claim made by the patient or the patient's representative. If such a release is obtained, no further releases are required in order for the provider to submit additional information in response to subsequent requests for information by the insurer to complete its review of the claim.

(d) Nothing in this section removes the obligation of a patient to pay for services if the patient's failure to authorize the release of information under this section results in the limitation or denial of insurance benefits.

As added by P.L.102-1994, SEC.6.

IC 16-39-4-6

Sec. 6. This chapter does not prohibit the application to mental health records of any law concerning health records that is not addressed by this chapter.

As added by P.L.4-1997, SEC.11.

IC 16-39-5**Chapter 5. Release of Health Records to Third Parties and for Legitimate Business Purposes**

IC 16-39-5-1

Sec. 1. This article does not prohibit a provider from obtaining a patient's health records from another provider without the patient's consent if the health records are needed to provide health care services to the patient.

As added by P.L.2-1993, SEC.22. Amended by P.L.6-1995, SEC.38.

IC 16-39-5-2

Sec. 2. (a) Except as provided in IC 16-39-2, IC 16-39-3, IC 16-39-4, and subsection (d), this article does not prohibit an accident and sickness insurance company (as defined in IC 27-8-5-1) from obtaining health records or medical information with a written consent executed at the time of receiving an application for insurance or at any other time. Such consent may be used at any time for legitimate accident and sickness insurance purposes.

(b) A written consent to obtain health records or medical information obtained at the time of application by an insurance company making any of the types of insurance not defined in IC 27-8-5 may be used for any legitimate insurance purposes for up to two (2) years from the date the contract is issued. A written consent obtained at any other time by an insurance company not defined in IC 27-8-5 may be used for up to one (1) year after the date the consent was signed. A copy of all health records or medical information obtained by an insurance company, other than a life insurance company (as defined in IC 27-1-2-3(s)), by means of the written consent of the patient under this subsection shall be furnished to the patient by the insurance company upon the written request of the patient.

(c) Consents obtained by any insurance company need only contain the following:

- (1) Name of the insured.
- (2) Date the consent is granted.
- (3) Name of the company to which consent is given to receive information.
- (4) General nature of the information that may be secured by use of the consent.

(d) Except as provided in subsection (e), an insurance company other than a life insurance company (as defined in IC 27-1-2-3(s)) may not obtain the results of any genetic screening or testing (as defined in IC 27-8-26-2) without a separate written consent by an individual at the time of application for insurance or at any other time. The form on which an individual indicates written consent must:

- (1) indicate in at least 10 point boldface type that the individual need not consent to releasing the results of any genetic testing or screening; and
- (2) be approved by the commissioner before use.

(e) An insurance company other than a life insurance company (as defined in IC 27-1-2-3(s)) is not liable if the insurance company:

- (1) inadvertently receives the results of any genetic testing or screening (as defined in IC 27-8-26-2); and
- (2) has not obtained a separate written consent as required under subsection (d).

An insurance company that inadvertently receives testing or screening results may not use the genetic testing or screening results in violation of IC 27-8-26.

As added by P.L.2-1993, SEC.22. Amended by P.L.1-1994, SEC.89; P.L.150-1997, SEC.1.

IC 16-39-5-3

Sec. 3. (a) As used in this section, "association" refers to an Indiana hospital trade association founded in 1921.

(b) As used in this section, "data aggregation" means a combination of information obtained from the health records of a provider with information obtained from the health records of one (1) or more other providers to permit data analysis that relates to the health care operations of the providers.

(c) Except as provided in IC 16-39-4-5, the original health record of the patient is the property of the provider and as such may be used by the provider without specific written authorization for legitimate business purposes, including the following:

- (1) Submission of claims for payment from third parties.
- (2) Collection of accounts.
- (3) Litigation defense.
- (4) Quality assurance.
- (5) Peer review.
- (6) Scientific, statistical, and educational purposes.

(d) In use under subsection (c), the provider shall at all times protect the confidentiality of the health record and may disclose the identity of the patient only when disclosure is essential to the provider's business use or to quality assurance and peer review.

(e) A provider may disclose a health record to another provider or to a nonprofit medical research organization to be used in connection with a joint scientific, statistical, or educational project. Each party that receives information from a health record in connection with the joint project shall protect the confidentiality of the health record and may not disclose the patient's identity except as allowed under this article.

(f) A provider may disclose a health record or information obtained from a health record to the association for use in connection with a voluntary data aggregation project undertaken by the association. However, the provider may disclose the identity of a patient to the association only when the disclosure is essential to the project. The association may disclose the information it receives from a provider under this subsection to the state department to be used in connection with a voluntary public health activity. The information disclosed by:

- (1) a provider to the association; or
 - (2) the association to the state department;
- under this subsection is confidential.

(g) Information contained in final results obtained by the state department for a voluntary public health activity that:

- (1) is based on information disclosed under subsection (f); and
 - (2) identifies or could be used to determine the identity of a patient;
- is confidential. All other information contained in the final results is not confidential.

(h) Information that is:

- (1) advisory or deliberative material of a speculative nature; or
- (2) an expression of opinion;

including preliminary reports produced in connection with a voluntary public health activity using information disclosed under subsection (f), is confidential and may only be disclosed by the state department to the association and to the provider who disclosed the information to the association.

(i) The association shall, upon the request of a provider that contracts with the association to perform data aggregation, make available information contained in the final results of data aggregation activities performed by the association.

(j) A person who recklessly violates or fails to comply with subsections (e) through (h) commits a Class C infraction. Each day a violation continues constitutes a separate offense.

(k) This chapter does not do any of the following:

- (1) Repeal, modify, or amend any statute requiring or authorizing the disclosure of information about any person.
- (2) Prevent disclosure or confirmation of information about patients involved in incidents that are reported or required to be reported to governmental agencies and not required to be kept confidential by the governmental agencies.

As added by P.L.2-1993, SEC.22. Amended by P.L.102-1994, SEC.7; P.L.103-1994, SEC.1; P.L.2-1995, SEC.73; P.L.231-1999, SEC.15; P.L.44-2002, SEC.5.

IC 16-39-5-4

Sec. 4. IC 16-39-9 governs the fees that may be charged for making and providing copies of records under this chapter.

As added by P.L.102-1994, SEC.8.

IC 16-39-6

Chapter 6. Access to Hospital Records by Hospital Medical Staff Committees

IC 16-39-6-1

Sec. 1. It is in the interest of public health and patient medical care that hospital medical staff committees have access to the records and other information concerning the condition and treatment of hospital patients to evaluate the care and treatment of patients as follows:

- (1) For research purposes.
- (2) For the purpose of gathering statistics and other information concerning the prevention and treatment of diseases, illnesses, and injuries.
- (3) For the purpose of reducing morbidity or mortality.

As added by P.L.2-1993, SEC.22.

IC 16-39-6-2

Sec. 2. To carry out the purposes described in section 1 of this chapter, a hospital or agents or employees of the hospital may provide medical records or other information concerning the condition or treatment of a hospital patient to a hospital medical staff committee.

As added by P.L.2-1993, SEC.22.

IC 16-39-6-3

Sec. 3. (a) Except as provided in subsection (b):

- (1) records or other information furnished a hospital medical staff committee under this chapter concerning the care and treatment of a hospital patient;
 - (2) proceedings of a hospital medical staff committee; and
 - (3) other records or reports of a hospital medical staff committee;
- are confidential.

(b) The confidential records and proceedings described in subsection (a) may be produced on court order in a cause in which the records and proceedings are relevant or material.

As added by P.L.2-1993, SEC.22.

IC 16-39-6-4

Sec. 4. A hospital medical staff committee shall use or publish information the committee obtains from records or other information submitted to the committee concerning the care or treatment of a patient only as follows:

- (1) To evaluate matters of medical care, therapy, and treatment.
- (2) For research and statistical purposes.

As added by P.L.2-1993, SEC.22.

IC 16-39-6-5

Sec. 5. (a) The members, agents, or employees of a hospital medical staff committee may not disclose the identity of any patient whose records have been studied in a report or publication of the committee.

(b) The members, agents, and employees of the medical staff committee shall protect the identity of a patient whose condition or treatment has been studied and may not disclose or reveal the identity of any patient.

As added by P.L.2-1993, SEC.22.

IC 16-39-7**Chapter 7. Maintenance of Health Records, X-rays, and Other Tests****IC 16-39-7-1**

Sec. 1. (a) As used in this section, "provider" means the following:

- (1) A physician.
 - (2) A dentist.
 - (3) A registered nurse.
 - (4) A licensed practical nurse.
 - (5) An optometrist.
 - (6) A podiatrist.
 - (7) A chiropractor.
 - (8) A physical therapist.
 - (9) A psychologist.
 - (10) An audiologist.
 - (11) A speech-language pathologist.
 - (12) A home health agency licensed under IC 16-27.
 - (13) A hospital or facility licensed under IC 16-21-2 or IC 12-25 or described in IC 12-24 or IC 12-29.
- (b) A provider shall maintain the original health records or microfilms of the records for at least seven (7) years.
- (c) A provider who violates subsection (b) commits an offense for which a board may impose disciplinary sanctions against the provider under the law that governs the provider's licensure, registration, or certification under this title or IC 25.

As added by P.L.2-1993, SEC.22.

IC 16-39-7-2

Sec. 2. (a) This section does not apply to original mammograms, which are governed by section 3 of this

chapter.

(b) As used in this section, "x-ray film" includes a microfilm copy of the x-ray film.

(c) A provider shall maintain a patient's x-ray film for at least five (5) years.

(d) At the time an x-ray film is taken, the provider shall do one (1) of the following:

(1) Inform the patient in writing of the following:

(A) The patient's x-ray film will be kept on file by the provider for at least five (5) years.

(B) If the patient would like a copy of the x-ray film during that period, the provider will provide the patient with a copy of the x-ray film at the actual cost to the provider, as provided in IC 16-39-1-2.

(2) Have posted conspicuously in the x-ray examination area a sign informing patients of the following:

(A) All x-ray films will be kept on file by a provider for at least five (5) years.

(B) On request during that time, the provider will provide the patient a copy of the patient's x-ray film at the actual cost to the provider.

(e) A provider is immune from civil liability for destroying or otherwise failing to maintain an x-ray film in violation of this section if the destruction or failure to maintain the x-ray film is inadvertent and not done in bad faith. However, this subsection does not prevent the imposition of disciplinary sanctions against the provider, as described in subsection (f).

(f) A provider who violates this section commits an offense for which a board may impose disciplinary sanctions against the provider under the statute that governs the provider's licensure, registration, or certification under this title or IC 25.

As added by P.L.2-1993, SEC.22. Amended by P.L.86-2001, SEC.1

IC 16-39-8

Chapter 8. Immunity From Liability

IC 16-39-8-1

Sec. 1. Providers and the providers' employees, agents, and representatives are immune from civil action for libel or slander arising from information or entries made in a patient health record if the information or entries are made in good faith and without malice.

As added by P.L.2-1993, SEC.22.

IC 16-39-8-2

Sec. 2. This chapter applies to mental health records.

As added by P.L.4-1997, SEC.12.

IC 16-39-9

Chapter 9. Charges Permitted for Providing Copies of Medical Records

IC 16-39-9-1

Sec. 1. This chapter does not apply to x-rays covered by either of the following:

(1) IC 16-39-1-2.

(2) IC 16-39-7-2.

As added by P.L.102-1994, SEC.9.

IC 16-39-9-2

Sec. 2. A provider may not charge a person for making and providing copies of medical records an amount greater than provided in this chapter.

As added by P.L.102-1994, SEC.9.

IC 16-39-9-3

Sec. 3. (a) A provider may collect a charge of twenty-five cents (\$0.25) per page for making and providing copies of medical records. If the provider collects a retrieval charge under subsection (b), the provider may not charge for making and providing copies of the first ten (10) pages of a medical record under this subsection.

(b) A provider may collect a fifteen dollar (\$15) retrieval charge in addition to the per page charge collected under subsection (a).

(c) A provider may collect actual postage costs in addition to the charges collected under subsections (a) and (b).

(d) If the person requesting the copies requests that the copies be provided within two (2) working days,

and the provider provides the copies within two (2) working days, the provider may collect a fee of ten dollars (\$10) in addition to the charges collected under subsections (a) through (c).

As added by P.L.102-1994, SEC.9.

IC 16-39-9-4

Sec. 4. (a) As used in this section, "department" refers to the department of insurance created by IC 27-1-1-1.

(b) Notwithstanding sections 1 and 2 of this chapter, the department may adopt rules under IC 4-22-2 to adjust the amounts that may be charged for copying records under this chapter. In adopting rules under this section, the department shall consider the following factors relating to the costs of copying medical records:

(1) The following labor costs:

(A) Verification of requests.

(B) Logging requests.

(C) Retrieval.

(D) Copying.

(E) Refiling.

(2) Software costs for logging requests.

(3) Expense costs for copying.

(4) Capital costs for copying.

(5) Billing and bad debt expenses.

(6) Space costs.

As added by P.L.102-1994, SEC.9.

IC 16-41-6

Chapter 6. Communicable Disease: Mandatory Testing of Individuals With Communicable or Dangerous Diseases

IC 16-41-6-0.5

"Standard licensed diagnostic test for HIV"

Sec. 0.5. As used in this chapter, "standard licensed diagnostic test for HIV" means a test recognized by the state department as a standard licensed diagnostic test for the antibody or antigen to HIV.

As added by P.L.237-2003, SEC.5.

IC 16-41-6-1 Version a

HIV screening and testing

Note: This version of section amended by P.L.212-2003, SEC.4. See also following version of this section amended by P.L.237-2003, SEC.6.

Sec. 1. (a) Except as provided in IC 16-41-10-2.5 and subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen to the human immunodeficiency virus (HIV) without the consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

As added by P.L.2-1993, SEC.24. Amended by P.L.106-1998, SEC.1; P.L.293-2001, SEC.3; P.L.212-2003, SEC.4.

IC 16-41-6-1 Version b

HIV screening and testing

Note: This version of section amended by P.L.237-2003, SEC.6. See also preceding version of this section amended by P.L.212-2003, SEC.4.

Sec. 1. (a) Except as provided in subsection (b), a person may not perform a screening or confirmatory test for the antibody or antigen

to HIV without the consent of the individual to be tested or a representative as authorized under IC 16-36-1. A physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented. The test for the antibody or antigen to HIV may not be performed on a woman under section 5 or 6 of this chapter if the woman refuses under section 7 of this chapter to consent to the test.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

As added by P.L.2-1993, SEC.24. Amended by P.L.106-1998, SEC.1; P.L.293-2001, SEC.3; P.L.237-2003, SEC.6

IC 16-41-6-2.5 Repealed

(Repealed by P.L.237-2003, SEC.18.)

IC 16-41-6-4

Testing newborn infants; confidentiality; notice; information on treatment options; objecting; rules

Sec. 4. (a) Subject to subsection (f), if:

(1) the mother of a newborn infant has not had a test performed under section 5 or 6 of this chapter;

(2) the mother of a newborn infant has refused a test for the newborn infant to detect HIV or the antibody or antigen to HIV; and

(3) a physician believes that testing the newborn infant is medically necessary; the physician overseeing the care of the newborn infant may order a confidential test for the newborn infant in order to detect HIV or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and

(2) provide HIV information and counseling to the mother. The information and counseling must include the following:

(A) The purpose of the test.

(B) The risks and benefits of the test.

(C) A description of the methods of HIV transmission.

(D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.

(E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) If a test ordered under subsection (a) is positive, the person who provides the results of the test shall

inform the mother of the newborn infant of treatment options or referral options available to the newborn infant.

(f) If a parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

(g) The state department shall adopt rules under IC 4-22-2 to carry out this section.

(h) The results of a test performed under this section are confidential.

As added by P.L.106-1998, SEC.2. Amended by P.L.237-2003, SEC.7

IC 16-41-6-5

Ordering and submitting a pregnant woman's blood sample for testing

Sec. 5. (a) This section applies to:

(1) a physician licensed under IC 25-22.5; or

(2) an advanced practice nurse licensed under IC 25-23;

who provides prenatal care within the scope of the provider's license.

(b) Subject to section 8 of this chapter, an individual described in subsection (a) who:

(1) diagnoses the pregnancy of a woman; or

(2) is primarily responsible for providing prenatal care to a pregnant woman;

shall order to be taken a sample of the pregnant woman's blood and shall submit the sample to an approved laboratory for a standard licensed diagnostic test for HIV.

As added by P.L.237-2003, SEC.8.

IC 16-41-6-6

No written evidence of testing; ordering and submitting sample

Sec. 6. Subject to section 8 of this chapter, if, at the time of delivery, there is no written evidence that a standard licensed diagnostic test for HIV has been performed under section 5 of this chapter, the physician or advanced practice nurse in attendance at the delivery shall order to be taken a sample of the woman's blood at the time of the delivery and shall submit the sample to an approved laboratory for a standard licensed diagnostic test for HIV.

As added by P.L.237-2003, SEC.9.

IC 16-41-6-7

Right to refuse test

Sec. 7. A pregnant woman has a right to refuse a test under section 5 or 6 of this chapter.

As added by P.L.237-2003, SEC.10.

IC 16-41-6-8

Informing pregnant woman of information; documenting information given and a refusal of test; information if test results positive; confidentiality

Sec. 8. (a) This section applies to a physician or an advanced practice nurse who orders an HIV test under section 5 or 6 of this chapter or to the physician's or nurse's designee.

(b) An individual described in subsection (a) shall:

(1) inform the pregnant woman that:

(A) the individual is required by law to order an HIV test unless the pregnant woman refuses; and

(B) the pregnant woman has a right to refuse the test; and

(2) explain to the pregnant woman:

(A) the purpose of the test; and

(B) the risks and benefits of the test.

(c) An individual described in subsection (a) shall document in the pregnant woman's medical records that the pregnant woman received the information required under subsection (b).

(d) If a pregnant woman refuses to consent to an HIV test, the refusal must be noted in the pregnant woman's medical records.

(e) If a test ordered under section 5 or 6 of this chapter is positive, an individual described in subsection (a):

(1) shall inform the pregnant woman of the test results;

(2) shall inform the pregnant woman of the treatment options or referral options available to the pregnant woman; and

(3) shall:

- (A) provide the pregnant woman with a description of the methods of HIV transmission;
 - (B) discuss risk reduction behavior modifications with the pregnant woman, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk; and
 - (C) provide the pregnant woman with referral information to other HIV prevention, health care, and psychosocial services.
 - (f) The provisions of IC 16-41-2-3 apply to a positive HIV test under section 5 or 6 of this chapter.
 - (g) The results of a test performed under section 5 or 6 of this chapter are confidential.
 - (h) As a routine component of prenatal care, every individual described in subsection (a) is required to provide information and counseling regarding HIV and the standard serological test for HIV and to offer and recommend the standard serological test for HIV.
 - (i) An individual described in subsection (a) shall obtain a statement, signed by the pregnant woman, acknowledging that the pregnant woman was counseled and provided the required information set forth in subsection (b) to ensure that an informed decision has been made.
 - (j) A pregnant woman who refuses a test under this section must do so in writing.
- As added by P.L.237-2003, SEC.11.*

IC 16-41-6-9

Information on confidential part of birth certificate

Sec. 9. The state department shall require, on the confidential part of each birth certificate and stillbirth certificate retained by the state department, in addition to the information otherwise required to be included on the certificate, the following information:

- (1) Whether a standard licensed diagnostic test for HIV was performed on the woman who bore the child.
- (2) If a standard licensed diagnostic test for HIV was performed:
 - (A) the date the blood specimen was taken; and
 - (B) whether the test was performed during pregnancy or at the time of delivery.
- (3) If a standard licensed diagnostic test for HIV was not performed, the reason the test was not performed.

As added by P.L.237-2003, SEC.12

IC 16-41-6-10

Distributing information on HIV treatment options

Sec. 10. The state department shall distribute to physicians and to other individuals who are allowed by law to attend a pregnant woman information available from the federal Centers for Disease Control and Prevention that explains the treatment options available to an individual who has a positive test for HIV.

As added by P.L.237-2003, SEC.13.

IC 16-41-6-12

Completing HIV test history and assessment form; retaining copy of form in patient's medical file; systemwide evaluation of prenatal HIV testing

Sec. 12. (a) The state department shall provide that an HIV test history and assessment form from the patient's medical records or an interview with the patient must be filled out. The state department shall develop the form to determine if:

- (1) the patient is HIV positive and has been informed; or
- (2) the patient was tested during the current pregnancy and tested negative or was not tested during the current pregnancy and the HIV status is unknown.
- (b) The form required under subsection (a) must identify what special support or assistance for continued medical care the patient might need as a result of a positive test.
- (c) A copy of the form must be:
 - (1) kept in the patient's medical file;
 - (2) kept in the baby's medical file; and
 - (3) given to the doctor in the hospital designated to administer the newborn HIV testing program.
- (d) The state department must maintain a systemwide evaluation of prenatal HIV testing in Indiana. The state department shall prescribe the HIV test history and assessment form and a newborn blood screening form. The state department shall remove all identifying information from the maternal test history before the state department performs its analyses and shall not maintain HIV test history data with identifying

information.

As added by P.L.237-2003, SEC.15.

IC 16-41-6-13

Treatment program access for women who test positive for HIV

Sec. 13. (a) Women who:

(1) meet all qualifications to participate in the children's health insurance program, the AIDS drug assistance program, the health insurance assistance program, or any other health care program of the state; and

(2) test positive under section 5 or 6 of this chapter;

shall be given first priority on a waiting list for the program if a waiting list exists. If a program does not have a waiting list, the woman described in this subsection shall be automatically approved and accepted into the program.

(b) If the state department determines during the process described in section 11(a)(3) of this chapter that the treatment of a woman who tests positive under this chapter should not be interrupted because of medical necessity, the woman may enter a program described in subsection (a) regardless of the existence of a waiting list for the program.

As added by P.L.237-2003, SEC.16

IC 16-41-6-13

Treatment program access for women who test positive for HIV

Sec. 13. (a) Women who:

(1) meet all qualifications to participate in the children's health insurance program, the AIDS drug assistance program, the health insurance assistance program, or any other health care program of the state; and

(2) test positive under section 5 or 6 of this chapter;

shall be given first priority on a waiting list for the program if a waiting list exists. If a program does not have a waiting list, the woman described in this subsection shall be automatically approved and accepted into the program.

(b) If the state department determines during the process described in section 11(a)(3) of this chapter that the treatment of a woman who tests positive under this chapter should not be interrupted because of medical necessity, the woman may enter a program described in subsection (a) regardless of the existence of a waiting list for the program.

As added by P.L.237-2003, SEC.16.

IC 16-41-9-5

Sec. 5. (a) If a designated health official determines that a carrier has a dangerous communicable disease and has reasonable grounds to believe that the carrier is mentally ill and either dangerous or gravely disabled, the designated health official may request:

(1) immediate detention under IC 12-26-4; or

(2) emergency detention under IC 12-26-5;

for the purpose of having the carrier apprehended, detained, and examined. The designated health official may provide to the superintendent of the psychiatric hospital or center or the attending physician information about the carrier's communicable disease status. Communications under this subsection do not constitute a breach of confidentiality.

(b) If the written report required under IC 12-26-5-5 states there is probable cause to believe the carrier is mentally ill and either dangerous or gravely disabled and requires continuing care and treatment, proceedings may continue under IC 12-26.

(c) If the written report required under IC 12-26-5-5 states there is not probable cause to believe the carrier is mentally ill and either dangerous or gravely disabled and requires continuing care and treatment, the carrier shall be referred to the designated health official who may take action under this article.

As added by P.L.2-1993, SEC.24.

IC 16-41-37

Chapter 37. Clean Indoor Air Law

IC 16-41-37-1

Sec. 1. As used in this chapter, "agency" means a board, a commission, a department, an agency, an authority, or other entity exercising a part of the executive, administrative, legislative, or judicial power of the state or local government.

As added by P.L.2-1993, SEC.24.

IC 16-41-37-2

Sec. 2. As used in this chapter, "public building" means an enclosed structure or the part of an enclosed structure that is one (1) of the following:

- (1) Occupied by an agency of state or local government.
- (2) Used as a classroom building or a dining area at a state educational institution (as defined in IC 20-12-0.5-1).
- (3) Used as a public school (as defined in IC 20-10.1-1-2).
- (4) Licensed as a health facility under IC 16-21 or IC 16-28.
- (5) Used as a station for paid firefighters.
- (6) Used as a station for paid police officers.
- (7) Licensed as a child care center or child care home or registered as a child care ministry under IC 12-17.2.
- (8) Licensed as a hospital under IC 16-21 or a county hospital subject to IC 16-22.
- (9) Used as a provider's office.

As added by P.L.2-1993, SEC.24. Amended by P.L.110-1997, SEC.3; P.L.20-1998, SEC.2.

IC 16-41-37-2.3**School bus**

Sec. 2.3. As used in this chapter, "school bus" means a motor vehicle that is:

- (1) designed and constructed for the accommodation of at least ten (10) passengers;
- (2) owned or operated by a public or governmental agency, or privately owned and operated for compensation; and
- (3) used for the transportation of school children to and from the following:
 - (A) School.
 - (B) School athletic games or contests.
 - (C) Other school functions.

As added by P.L.252-2003, SEC.9.

IC 16-41-37-2.7**School week**

Sec. 2.7. As used in this chapter, "school week" means a normal Monday through Friday week that contains three (3) or more days that each contain more than four (4) hours of classroom instruction.

As added by P.L.252-2003, SEC.10.

IC 16-41-37-3

Sec. 3. As used in this chapter, "smoking" means the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment, or the inhalation or exhalation of smoke from any lighted smoking equipment.

As added by P.L.2-1993, SEC.24.

IC 16-41-37-3.1

Sec. 3.1. As used in this chapter, "retail area" means the sales area of a grocery store or drug store. The term does not include an area of a grocery store or drug store that is used for:

- (1) the service of food; or
- (2) an employee lounge or a break room.

As added by P.L.256-1996, SEC.5.

IC 16-41-37-4**Locations where smoking prohibited; infractions following prior violations**

Sec. 4. A person who smokes:

- (1) in a public building, except in an area designated as a smoking area under section 5 of this chapter;
- (2) in the retail area of a grocery store or drug store that is designated as a nonsmoking area by the store's proprietor;
- (3) in the dining area of a restaurant that is designated and posted as the restaurant's nonsmoking area by the restaurant's proprietor; or

(4) in a school bus during a school week or while the school bus is being used for a purpose described in section 2.3(3) of this chapter; commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) previous unrelated judgments for violating this section that are accrued within the twelve (12) months immediately preceding the violation.

As added by P.L.2-1993, SEC.24. Amended by P.L.256-1996, SEC.6; P.L.20-1998, SEC.3; P.L.252-2003, SEC.11

IC 16-41-37-5

Sec. 5. (a) The official in charge of a public building shall designate a nonsmoking area and may designate a smoking area in the building.

(b) When smoking and nonsmoking areas are designated, the official in charge of a public building may take reasonably necessary measures to accommodate both smokers and nonsmokers.

(c) If a public building consists of a single room, any part or all of the room may be reserved and posted as a nonsmoking area.

As added by P.L.2-1993, SEC.24.

IC 16-41-37-6

Sec. 6. (a) The official in charge of a public building shall do the following:

(1) Post conspicuous signs that read "Smoking Is Prohibited By State Law Except In Designated Smoking Areas" or other similar language.

(2) Request persons who are smoking in violation of section 4 of this chapter to refrain from smoking.

(3) Remove a person who is smoking in violation of section 4 of this chapter and fails to refrain from smoking after being requested to do so.

(b) The proprietor of a restaurant shall, under sections 4 and 5 of this chapter, post conspicuous signs at each entrance to the restaurant, informing the public of the establishment's smoking policy.

As added by P.L.2-1993, SEC.24. Amended by P.L.256-1996, SEC.7.

IC 16-41-37-7

Sec. 7. The state department may adopt rules under IC 4-22-2 to restrict or prohibit smoking in public buildings where the close proximity of workers causes smoking to affect the health and comfort of nonsmoking employees.

As added by P.L.2-1993, SEC.24.

IC 16-41-37-8

Sec. 8. The state department may waive the requirements of section 5(b), 5(c), or 6 of this chapter if the state department determines that:

(1) there are compelling reasons to do so; and

(2) the waiver will not significantly affect the health and comfort of nonsmokers.

As added by P.L.2-1993, SEC.24.

IC 16-41-37-9

Sec. 9. Notwithstanding IC 16-41-39, this chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance more restrictive than this chapter.

As added by P.L.2-1993, SEC.24. Amended by P.L.256-1996, SEC.8.

IC 16-41-39

Chapter 39. Tobacco Sale Regulation

IC 16-41-39-1

Sec. 1. Regulation of the sale, distribution, or display of tobacco products may only be authorized by the general assembly.

As added by P.L.256-1996, SEC.9.

IC 16-41-39-2

Sec. 2. An ordinance, a bylaw, or a rule of:

(1) a county;

(2) a city;

(3) a township;

(4) a department, a board, or an agency of a:

(A) county;

(B) city; or

(C) township; or

(5) any other political subdivision or agency of the state;

concerning matters listed in section 1 of this chapter is void, regardless of when enacted.

As added by P.L.256-1996, SEC.9.

IC 16-41-39-3

Sec. 3. Notwithstanding section 1 of this chapter, this chapter does not prohibit a political subdivision from adopting limitations on the locations at which a transient merchant licensed under IC 25-37-1-3 may conduct business within the jurisdiction of the political subdivision.

As added by P.L.256-1996, SEC.9.